



ology aides. SPAEC hears all matters assigned to it by the Division, including but not limited to any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to DAHP for final adoption.

SPAEC is authorized by the Speech-Language Pathologists and Audiologists Licensure Act, Business and Professions Code section 2530 *et seq.*; its regulations are contained in Division 13.4, Title 16 of the California Code of Regulations (CCR).

At this writing, two Committee members—one audiologist and one public member—are serving under a grace period, having completed the maximum term of service without replacement. In addition, three SPAEC positions are vacant: one audiologist, one speech-language pathologist, and one public member position appointed by the Assembly Speaker.

MAJOR PROJECTS

SPAEC Proposes Regulation Specifying Exam Waiver Criteria. On November 27, following discussion at its October 17 meeting, SPAEC published proposed amendments to section 1399.159(b), Division 13.4, Title 16 of the CCR, to define the criteria it will apply in deciding whether to grant a request for an exam waiver under Business and Professions Code section 2532.2(e). The rulemaking effort stems from a formal petition filed by the Center for Public Interest Law, which SPAEC granted at its April 1992 meeting. [12:4 CRLR 109-10; 12:2&3 CRLR 125]

The proposed amendments provide that SPAEC applicants who have taken and passed the national examination and who (1) are licensed in another state, or (2) hold a certificate of clinical competence issued by the American Speech-Language-Hearing Association in the field for which licensure is sought, or (3) were previously licensed in this state but whose license has lapsed under Business and Professions Code section 2535.4, and can prove they have been continuously employed (except for usual and customary absences for illness and vacations) in the field for which licensure is sought for three years prior to the date on which their application was filed with SPAEC, shall be deemed to have satisfied the examination requirement in regulatory section 1399.159(a) even though the national exam was taken more than five years prior to the date on which their application was filed with SPAEC. Continuous employment in the field for which licensure is sought is defined as documented employ-

ment of not less than 15 hours per week during the three years specified above while maintaining a license in the state where the applicant was employed. The proposed regulation would also allow an applicant who has less employment experience than required to submit proof of continuing education in the field for which licensure is sought; SPAEC will review this combination on a case-by-case basis.

SPAEC was scheduled to hold a public hearing on this proposed regulatory change at its January 16 meeting in San Diego.

SPAEC Prepares to Tighten the Budget Belt. The budget cuts set forth in the 1992-93 Budget Bill require special-funded agencies, including SPAEC, to reduce expenditures by 10% from 1991-92 and to transfer that 10% to the general fund on June 30, 1993. [12:4 CRLR 110] SPAEC will be allowed to transfer this amount from its reserve account rather than actually reduce expenditures, although the agency is expecting a true 10% cut in expenditures to be mandated for the 1993-94 budget. Further, SPAEC will no longer be allowed to keep a reserve fund containing one year's worth of operating expenses. At the end of the fiscal year, all funds in excess of two months' worth of operating expenses will be transferred to the general fund.

SPAEC has also endured some travel cuts, but they have been insignificant as compared to other agencies which travel a great deal. However, the reduction in out-of-state travel funds has meant the curtailment of travel to national events and the opportunity to maintain a broad outlook on national developments.

Advertising Issues Task Force. At SPAEC's October meeting, Committee Chair Robert Hall reported that, as the result of the Advertising Issues Task Force's July 31 meeting [12:4 CRLR 110], the Hearing Aid Dispensers Examining Committee (HADEC) has drafted a document entitled "Advertising Guidelines for Hearing Aid Dispensers," which is an effort to educate the industry and put potential violators on notice of what is and what is not acceptable in the advertising of hearing aids and related products. (See *supra* agency report on HADEC for related discussion.)

LEGISLATION

Future Legislation. SPAEC may pursue several legislative changes during the 1993-94 session, such as charging a fee for the exam waiver interview and further refinement of the definition of audiology to keep up with developing technologies which require new methods of diagnosis

and treatment. Department of Consumer Affairs (DCA) legal counsel Greg Gorges has warned that some procedures used by audiologists border on what are normally described as "invasive" procedures, such as the making of earmold impressions. The Legislation/Regulation Subcommittee will look into these areas, as well as the need for legislation regarding mandatory continuing education (*see infra*) and a recent question regarding the faxing of audiology results for review and whether a reviewing audiologist is allowed to do this under the current definition of audiology.

RECENT MEETINGS

SPAEC held its fourth and final meeting of 1992 in San Francisco on October 17. Executive Officer Carol Richards noted the many changes taking place within DCA. Of special interest is DCA's willingness to focus on unlicensed practice and push for more enforcement in this area. SPAEC has been and is continuing to develop an enforcement program aimed at unlicensed activity as specified in SB 2044 (Boatwright) (Chapter 1135, Statutes of 1992). [12:4 CRLR 110] The legislature has determined that the sanction for unlicensed activity should be "swift, effective, appropriate," and should create a strong incentive to obtain a license. SPAEC planned to publish a newsletter for release in January to specify the unlawful activities, including but not limited to practice without a license, and the related fines that could be imposed upon imposition of a citation. Fines range between \$250-\$1,000; the newsletter will provide further notice that practicing without a license is an infraction.

SPAEC also discussed the need for rules or legislation regarding mandatory continuing education (CE). SPAEC has considered the need for mandatory CE in the past [12:2&3 CRLR 126] and, with passage of SB 2044, it will attempt to locate an author and submit legislation which complies with SB 2044.

FUTURE MEETINGS

June 26 in Los Angeles.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel (916) 263-2685

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Adminis-



trators (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.

The terms of Board members John Colen and Donald Henderson have expired and they have not been reappointed. At this writing, their replacements have not been named.

MAJOR PROJECTS

RCFE Administrator Licensing/Certification Program Update. On October 13 in Sacramento and December 8 in Los Angeles, BENHA held public hearings regarding the proposed transfer of the residential care facility for the elderly (RCFE) administrator certification program from the Department of Social Services (DSS) to BENHA. [12:4 CRLR 111-12] At BENHA's October 14 meeting, Board member Nancy Campbell summarized the events of the first public hearing, noting that the Board had received numerous letters both in favor of and opposed to the transfer. Campbell opined that many participants were misinformed about the nature of the proposed transfer; for example, some RCFE administrators already certified by DSS believed that they would be required to repeat the certification course and retake the examination, or that their current licenses would be revoked.

Other Board members agreed that much of the testimony in opposition to the proposed takeover was based on misperception and misinformation. At the meeting, BENHA Chair Jim Wark asked those in attendance if they had any comments regarding the issue or the hearing; a representative of a residential care association expressed his opposition to the proposal and stated that DSS should be allowed to oversee the RCFE program for at least one full year.

At BENHA's December 9 meeting, Campbell reported on the public hearing which had taken place one day earlier. She noted that the meeting was different in nature from the one in October, since the October attendees consisted mainly of independent, small facility representatives and the December attendees represented larger facilities and appeared to be more organized. Most of the December participants voiced opposition to the program transfer, contending that residential care and skilled nursing care are inherently different in nature and their regulatory programs should not be combined; the nursing home industry is attempting to take over residential care and is the lobbying force behind the proposal; should the transfer take place, the current certification program would change and most likely have increased regulatory requirements; and the residential care industry would not be represented fairly on BENHA. Additionally, those who testified expressed satisfaction with DSS' implementation of the program.

However, the Board noted that the two DSS representatives who currently oversee the RCFE certification program continue to express interest in examining the proposed transfer; according to Board member Douglas Troyer, both DSS representatives believe that it is a conflict of interest for DSS to license RCFEs as well as those who operate them. Following discussion, BENHA unanimously agreed not to pursue legislation to transfer the program at this time, but to continue to explore the transfer with special emphasis on determining budgetary implications of the transfer; examining whether a separate board or a "sub-board" of BENHA should be created to oversee the program; and evaluating concerns and comments from testimony given at public hearings.

Long-Term Care Demonstration Project. In June, BENHA agreed to participate in the Quality of Long-Term Care Demonstration Project being conducted by the Medical Board in cooperation with the Department of Aging and several other state agencies; the goal of the program is to improve the quality of care in licensed

long-term facilities. [12:4 CRLR 112] At BENHA's December meeting, Executive Officer Ray Nikkel reported that he attends monthly meetings with various individuals involved in long-term care; Nikkel stated that he is quite pleased with the progress at the sessions. The meetings are intended to improve communication between the Department of Aging's Ombudsman Program and various state agencies which regulate individuals and institutions involved in long-term care. Currently, the participants are working on several issues, including increasing the availability of ancillary medical staff in skilled nursing facilities as an extension to physician services. When the meetings are completed, participants will publish a comprehensive report addressing problems, concerns, and possible solutions.

Examination and Enforcement Statistics. The pass rate for the October 8 state NHA exam was 57%; the national exam pass rate was 54%.

From August 1 to November 30, the Department of Health Services (DHS) referred to BENHA four citations for "AA" violations and 116 citations for "A" violations. Violations designated "AA" are facility violations of standards which lead to a patient's death; "A" violations are those that seriously endanger a patient's safety with a substantial probability of death or serious bodily harm. During these four months, BENHA conducted 13 informal telephone counseling sessions with licensees, conducted no formal telephone counseling sessions, and did not issue any letters of warning.

In December, BENHA published its list of NHAs whose licenses have been suspended, revoked, or placed on probation through December 2. Six NHAs are on probation, one of whom is currently working as a designated administrator of a nursing home. BENHA is required to publish information concerning the status of NHAs pursuant to AB 1834 (Connelly) (Chapter 816, Statutes of 1987).

Nursing Home Reform Act Update. In February 1992, as a result of the settlement of litigation between the federal Health Care Financing Administration (HCFA) and DHS regarding California's implementation of the federal Nursing Home Reform Act of 1987, HCFA published proposed rules implementing the federal reforms in the *Federal Register* (57 Fed. Reg. 4516). Among other things, the proposed rules relate to the qualifications of nursing home administrators; if approved, California's NHA licensure requirements will have to be amended. [12:2&3 CRLR 128] At this writing, HCFA's revised regulations are not expected to be released



until the summer.

RECENT MEETINGS

At BENHA's October 14 meeting in Sacramento, Executive Officer Ray Nikkel reported that the Board will begin to audit continuing education courses of approximately 10% of the state's 2,200 actively licensed NHAs.

At BENHA's December meeting, Nikkel reported on the annual meeting of the Board of Governors of the National Association of Boards of Examiners of Nursing Home Administrators (NAB), which was held on November 3-6 in Columbus, Ohio. Nikkel reported that NAB's Education Committee approved a common core curriculum for nursing home administrators, which will enable colleges and universities interested in offering health care administration degrees to work with NAB to ensure the most practicable courses are offered; and NAB's Disciplinary Committee is setting up a national registry in which all states will report disciplinary actions taken against NHAs. According to Nikkel, California's disciplinary system is being used as the model for the national registry.

FUTURE MEETINGS

To be announced.

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, including three public members and six licensed optometrists.

MAJOR PROJECTS

License Fee Increase. AB 2566 (O'Connell) (Chapter 645, Statutes of 1992) amended Business and Professions Code section 3152, authorizing the Board to increase its initial application/examination fee from \$75 to a maximum of \$275, and its annual license renewal fee from

\$85 to a maximum of \$150. [12:4 CRLR 114] The Board desperately needs enhanced revenues to fund its licensing and enforcement operations, as it has not increased its fees since 1976 and has repeatedly been forced to request deficiency augmentations because its expenditures far exceed its revenues.

When seeking to increase licensing fees, most occupational licensing agencies within the Department of Consumer Affairs (DCA) seek legislation establishing a new fee ceiling; they then gradually increase fees through the Administrative Procedure Act rulemaking process (with Office of Administrative Law review for necessity) up to that maximum ceiling. However, the Board of Optometry believes it is not required to set its fees through rulemaking, and has simply raised its application/examination fee to \$275 and its annual renewal fee to \$150, effective January 1, 1993.

Board Receives Approval for Additional Expenditures. The Department of Finance recently approved two budget change proposals (BCP) to augment the Board's enforcement and examination expenditures.

For the last three fiscal years, the Board's budget has fallen short in the enforcement area, resulting in deficit spending (*see supra*). The budget supplement will assist the Board in responding to a large increase in the number of complaints referred to investigation and referrals to the Attorney General's Office. The Board's 1992-93 enforcement budget will be augmented by \$68,028, and by \$71,000 during fiscal year 1993-94.

The examination BCP covers increased costs for examiners as well as exam site rental costs. Expenditure projections indicated that the Board would not have sufficient resources to meet the ongoing demand for subject matter experts, expert examiners, and exam site rental. The additional allocation of \$36,000 during 1993-94 is expected to cover actual costs.

DCA Rejects Board's Plan to Abolish Examination Appeal Process. For the past year, the Board has been involved in a rulemaking proceeding to amend section 1533 and repeal section 1533.1, Division 15, Title 16 of the CCR, to abolish its examination appeal process. Against opposition from the California Optometric Association, the Board adopted the proposed regulatory changes in February 1992. [12:4 CRLR 114; 12:2&3 CRLR 130] However, on December 21, DCA Director Jim Conran rejected the proposed changes, stating that "elimination of a formal appeal process...is contrary to the rec-

ommendations of DCA's Central Testing Unit." Conran suggested that the Board identify less restrictive alternatives to outright abolition of the appeal process, such as defined criteria for appeal and time restrictions on test use by unsuccessful candidates.

The Board has two options: it may attempt to overrule Conran's rejection with a unanimous vote, or it may follow his suggestion and draft new regulations consistent with his comments.

Board Completes Consumer Education Pamphlet. The Board's Public Relations and Consumer Education Committee recently completed a consumer education pamphlet, which includes an explanation of the relative responsibilities of various eye care professionals, including optometrists, ophthalmologists, and opticians. The pamphlet also describes how optometrists may be disciplined; lists twelve types of violations for which an optometrist may be disciplined; describes the type of information the Board may release in response to a consumer inquiry about an optometrist; explains the law on release of prescriptions for glasses and contact lenses; describes how individuals may obtain copies of their patient records; and explains the process for filing a complaint against an optometrist and the subsequent procedures undertaken by the Board. The pamphlet also provides information on how to contact the Board of Optometry, as well as the major optometric trade associations and schools. The pamphlet will be available to consumers as soon as printing is completed.

Occupational Analysis Study Begins. The Board's long-awaited occupational analysis of practicing optometrists has begun. [12:4 CRLR 113-14] Human Resource Strategies is conducting the project, which is aimed at identifying in great detail how the profession is practicing optometry in the state and developing a blueprint for a licensing exam which tests for the minimum competence needed for an entry-level optometrist. Preliminary results of the one-year study are expected to be available in October; the final report should be completed in December.

Board Considers Disclosure Regulation Regarding Contact Lens Prescriptions. In an effort to decrease consumer confusion, the Board is considering the adoption of a regulatory change concerning the release of contact lens prescriptions. [12:4 CRLR 114] At its November 20-21 meeting, the Board discussed adopting proposed section 1566, Title 16 of the CCR, to require optometrists to post a notice containing the following information: "Federal law requires that a written