



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
(916) 323-8720

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



copy of the spectacle prescription be given to the patient. However, the law does not require the release of a contact lens prescription; this is left to the discretion of the optometrist. You may want to inquire about your doctor's policy regarding the contact lens prescription prior to the examination." A majority of the Board believes that such a notice requirement is necessary to ensure that patients are aware of this loophole in the law, noting that its Sacramento office has received numerous complaints from individuals who were unable to obtain a copy of their contact lens prescription. Because consumers often assume that they are entitled to receive their prescriptions, the Board believes that the proposed notice is necessary to inform consumers of the law in this area. At this writing, the Board has not yet published notice of its intent to adopt this regulation in the *California Regulatory Notice Register*.

UCLA Optometry Refresher Course Update. The first segment of an optometry refresher course primarily designed for foreign-trained individuals is now completed. Forty-one students participated in the first part of the course, designed by the Board and the University of California and offered through the UCLA Health Sciences Extension Program. [12:4 CRLR 114] Twenty of the students recently completed the national written basic science test (a requirement for licensure); one passed and eight others achieved scores just below a passing grade. The clinical portion of the program began in September and will conclude in April. UCLA reported that students are very positive about the class, and that the University will evaluate the program upon its conclusion.

RECENT MEETINGS

At its November 20 meeting, the Board elected its officers for 1993. Thomas Nagy, OD, will continue as president; Joseph Dobbs, OD, will serve as vice-president; and John R. Anthony, OD, will serve as secretary.

Executive Officer Karen Ollinger reported on the Board's enforcement statistics for the period of January through June 1992. During this six-month period, the Board received 191 complaints regarding optometrists; a total of 643 complaints were pending from all prior periods. The Board closed a total of 64 complaints; of those, 27 resulted in mediated settlements, nine were categorized as violations (the Board issued two citations with a fine and three warning notices), five were referred to the Attorney General or other appropriate agency, and 23 were considered un-

actionable. During the six-month period, the Attorney General's Office filed three accusations against optometrists; all three cases resulted in stipulated judgments with the optometrist receiving suspension and probation.

The Board also continued its discussion of Business and Professions Code section 655, which prohibits landlord-tenant relationships, or any other kind of profit-sharing arrangement, between optometrists and opticians. Previously, the Board and the Medical Board of California's Division of Allied Health Professions had disagreed on the proper interpretation of section 655. [12:4 CRLR 115] However, no additional review is anticipated at this time, since the Board's position is consistent with Attorney General's Opinion No. 80-417 (March 4, 1981), and since the Board may establish further guidelines for optometrists under its direction, if necessary.

FUTURE MEETINGS

May 20-21 in San Diego.

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 accusations and 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 public. The remaining members are pharmacists, five of whom must be active practitioners. All are appointed for four-year terms.

In late December, Governor Wilson appointed Darlene Fujimoto to the Board; Fujimoto is a senior pharmacist and geri-

atric specialist at the University of California at Irvine Medical Center and consultant pharmacist for Clinical Care Pharmacies, Inc. Also in December, Wilson reappointed Janeen McBride to the Board; McBride is the western region health care specialist for American Drug Stores, Sav-On Drugs.

MAJOR PROJECTS

Board to Restructure Enforcement Unit. At its October 14-15 meeting, the Board discussed its plans to seek a budget change proposal (BCP) which would enable it to augment its enforcement program, which has not been expanded in at least ten years. [12:4 CRLR 117-18] According to the Board, the expansion is necessitated by an increase in the number of pharmacies and pharmacists, the establishment of new registration programs such as medical device retailers and pharmacy technicians, and changes in the law governing the practice of pharmacy; further, the Board expects that the new mandatory patient consultation regulations which became effective on November 1 will alter the delivery of pharmacy care in California, increasing the visibility of the profession and the Board's role in protecting the public safety. The Board concedes that its failure to expand the enforcement program to meet the number of new programs and licensees has resulted in the following problems:

-Complaints are open too long; consequently, investigation reports are not filed in a timely manner, negatively affecting public safety. Certain complaints that warrant undercover investigation may fail to be substantiated simply because the inspector cannot devote sufficient time to perform a thorough investigation or audit due to oppressive workload demands. As a result, pharmacists may be cautioned with an admonition or scheduled for an appearance before one of the Board's Interim Disciplinary Committees rather than disciplined through the formal adjudicatory process.

-Drug audits are performed only in cases where severe shortages are suspected based on the Bureau of Narcotic Enforcement reports for Schedule II drugs or purchases of excessively large quantities of certain controlled substances listed on the Board's wholesaler distribution report. According to the Board, drug audits of Schedule III and IV drugs are even more rare, encouraging drug diversion. For example, the Board suspects that steroids (Schedule III drugs) are being diverted from pharmacies in California for illegal sale; because the Board is no longer routinely auditing pharmacies' drug in-