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 unactionable. 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 geriatric 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-

ventories, it is unable to take proactive strides to curtail this activity unless investigating a complaint.

–Innovative enforcement issues are not being expeditiously addressed. For example, in July 1991, the Board issued a report on what seemed to be a widespread pattern of illegal kickbacks between physicians and home health care agencies for the referral of patients *[11:4 CRLR 104; 10:4 CRLR 98]*; however, the Board's heavy workload precluded it from doing anything but investigate only the most pressing cases. Also, due to the delay in availability of Board staff, the FBI's "Operation Goldpill" arrests were delayed at least 75 days past the nationwide press conference announcing the undercover investigation involving false Medicare billings and illegal sales of drugs. *[12:4 CRLR 115]*

–The Board has not inspected all pharmacies every three years, as is required by its policy. According to the Board, routine inspections have been eliminated entirely; inspections are conducted only when needed (to issue a new permit, in conjunction with an investigation, or as part of the terms of a licensee's probation).

–Unless the complainant contacts the Board, the Board is not able to routinely provide feedback to those who initiate enforcement cases involving patient injury during the two and one-half years while cases are pending in the administrative disciplinary process; as a result, the Board appears nonresponsive to consumers about the more serious complaints in which accusations are filed.

–Board staff members are required to spend inordinate amounts of time traveling in order to cover huge territories; for example, one inspector covers the entire territory from Orange County south to the Mexican border and east to Arizona.

–Unlicensed activity by medical device retailers (MDRs) is going unenforced. Despite the program's implementation in July 1991, the Board estimates that a minimum of 200 firms are working unlicensed as MDRs.

The Board noted that it has no specialized complaint intake staff to receive, refer, or resolve complaints and inquiries. Instead, its inspectors handle nearly all calls and written inquiries regarding enforcement and pharmacy law interpretation, as well as those from consumers with inquiries or problems with pharmacists, pharmacies, and pharmaceutical products. Currently, incoming calls are routed to an inspector in either the Board's Sacramento or Los Angeles office. Calls average seven per workday to each of the Board's thirteen inspectors, and approximately fifteen per day to each of the two supervising inspectors who are generally office-bound. The Board notes that these are new inquiries, not follow-up responses regarding investigations and inspections already in progress with the inspectors.

As a result, the Board is planning to restructure its enforcement unit by establishing a public inquiry component and increasing its inspector staff. The Board plans to redirect the initial intake of telephone and written complaints from the pharmacy inspectors and instead hire a consumer service representative and office technician to respond to such inquiries, track complaints and cases, and prepare periodic correspondence to update those who have contacted the Board. Also, the Board notes that its inspection staff must be increased to enable it to investigate complaints expeditiously, conduct random and periodic inspections of pharmacies, and perform drug audits.

At its October meeting, the Board agreed to pursue the BCP and to institute the rulemaking process to increase licensing fees in order to generate funding for the additional staff; at this writing, notice of the proposed fee increase has not been published in the *California Regulatory Notice Register.*

Rapid Rise in Drug Prices May Prod Legislation. Over the past nine years, prices of prescription drugs have risen at nearly three times the consumer price index (CPI). Although they account for only approximately 5% of total health care costs, prescription drugs have attracted consumer attention because insurance typically does not cover their cost. Congress has mandated that drug manufacturers extend to Medicaid the same discounts offered to volume buyers such as health maintenance organizations and hospitals. U.S. Senator David Pryor (D-Arkansas) may reintroduce legislation from last session that could deny billions of dollars in tax credits to those companies whose drug prices increase at a faster rate than the CPI. In anticipation of such legislation, some drug companies have promised to keep their price increases in line with the CPI.

Patient Consultation Regulations. On October 14, the Board held a public hearing on its proposed amendments to sections 1707.1 and 1707.2, and its proposed adoption of section 1707.3, Title 16 of the CCR, regarding its patient consultation requirements. According to the Board, the proposed changes would align existing California pharmacy regulations with provisions of the federal Omnibus Budget Reconciliation Act of 1990 (OBRA 90) which establish patient consultation by pharmacies as a requirement for Medicaid-covered patients and specify required and permissive duties for pharmacists in this regard. *[12:4 CRLR 115–16]* At the hearing, the Board received extensive testimony on the proposals from representatives of the County of Orange Health Care Agency, the California Retailers Association, Kaiser Permanente Medical Care Program, the California Pharmacists Association, and the California Association of Public Hospitals. Following consideration of the comments received, the Board adopted the proposed regulatory changes subject to minor modifications. The Board released the revised text for an additional fifteen-day public comment period; the revisions await review and approval by the Office of Administrative Law (OAL).

Compounding for Office Use Regulations. On June 22, OAL disapproved the Board's proposal to adopt new sections 1716.1 and 1716.2, Title 16 of the CCR. Section 1716.1 would define the quantity of compounded medication which a pharmacist may furnish to a prescriber for office use under Business and Professions Code section 4046(c)(1), and section 1716.2 would specify the minimum types of records that pharmacies must keep when they furnish compounded medication to prescribers in quantities larger than required for the prescriber's immediate office use or when a pharmacy compounds medication for future furnishing. Among other things, OAL rejected the sections on the basis that they failed to meet the clarity and necessity standards of the Administrative Procedure Act. *[12:4 CRLR 116]*

At its October meeting, the Board discussed the issues raised by OAL. Executive Officer Patricia Harris explained that in order to resolve OAL's concerns, staff made various revisions that needed Board approval. The two major changes (1) add language specifying that the term "compounding for prescriber officer use" pertains only to unapproved drugs, and (2) delete language providing that the term "compounded medication" also means repackaging for administration or application to a patient in the prescriber's office or for dispensing not more than a 72-hour supply to the prescriber's patient. The Board approved the amended language; at this writing, the sections await resubmission to OAL.

Pharmacist-in-Charge Regulations. The Board's amendment to section 1709.1, Title 16 of the CCR, to allow a pharmacist to be the pharmacist-in-charge at two pharmacies if only one of these pharmacies is open at any given time and if the pharmacist is the only pharmacist at each pharmacy, was approved by OAL on

December 11. *[12:4 CRLR 116]*

Medical Device Retailers' Locked Storage Regulations. The Board's rulemaking file regarding its proposed adoption of new sections 1748.1 and 1748.2, Title 16 of the CCR, regarding the proper storage of dangerous devices at medical device retailer (MDR) retail sites and the delivery of devices by MDRs to patients after hours or in emergency situations, was submitted to OAL in mid-December. *[12:4 CRLR 117]*

FDA Responds to Concerns About Wholesaler Licenses. In June 1992, OAL approved the Board's regulatory amendments to section 1780, Title 16 of the CCR, which change California's requirements for drug wholesalers so that they meet or exceed the standards of the federal government under the Prescription Drug Marketing Act of 1987. *[12:4 CRLR 116]* Also to comply with federal requirements, the Board obtained statutory changes to Business and Professions Code section 4038 to delete the exemption of pharmacies and licensed manufacturers from the definition of the term "wholesaler," through the passage of AB 2743 (Frazee) (Chapter 1289, Statutes of 1992). *[12:4 CRLR 117]* As a result, pharmacies which engage in specified activities are subject to Business and Professions Code section 4084, which provides that no person shall act as a drug wholesaler unless he/she has obtained a certificate, license, permit, registration, or exemption from the Board.

In response to its actions, the Board received inquiries from small independently-owned pharmacies regarding how the Board will determine that a pharmacy should be licensed as a wholesaler if that pharmacy engages in the following common practices: (1) sells legend drugs at wholesale prices to another pharmacy to cover an out-of-stock situation of the buying pharmacy; (2) purchases a volume deal at a very good price from the manufacturer but cannot use the entire amount purchased and therefore sells the surplus to one or more other pharmacies at the "deal" price; and (3) sells vaccines, chemotherapeutic agents, or compounded or repackaged legend drugs to a prescriber for office use and/or dispensing to the ultimate consumer.

In response to these inquiries, Board Executive Officer Patricia Harris asked the Food and Drug Administration (FDA) for clarification as to how the Board should determine that a pharmacy is engaged in "wholesale" operation and is thus required to be licensed as a wholesaler. At its October meeting, the Board reviewed the FDA's response, which answered each question as follows:

(1) Section 205.3(f)(5) of the federal "Guidelines for State Licensing of Wholesale Prescription Drug Distributors" (Licensing Guidelines) states that wholesale distribution does not include the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; the term "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage. Therefore, sales from one retail pharmacy to another to alleviate a temporary out-of-stock situation meets the "emergency medical reasons" criterion of the Licensing Guidelines and does not require the selling retail pharmacy to be licensed as a wholesale distributor.

(2) Section 205.3(f) of the Licensing Guidelines defines "wholesale distribution" as the distribution of prescription drugs to persons other than a consumer or patient. The FDA noted that this section contains eight exceptions, and unless one of these exceptions is met by the selling retail pharmacy, the sales are considered wholesale distribution and the retail pharmacy must be licensed accordingly.

(3) Neither the federal Food, Drug, and Cosmetic Act nor the federal Licensing Guidelines address the sale of prescription drugs by retail pharmacies to licensed practitioners for office use. According to the FDA, "[i]n the interests of avoiding undue interference with normal business practices in the health care field,...the sale of minimal quantities of prescription drugs by a retail pharmacy to licensed practitioners for office use is not wholesale distribution as contemplated by the [Prescription Drug Marketing Act]." The FDA stated its "present position that sales by a retail pharmacy to licensed practitioners of prescription drugs for office use will not be considered wholesale distribution requiring state licensing if the total annual dollar volume of prescription drugs sold to licensed practitioners does not exceed five percent of that retail pharmacy's total annual prescription drug sales."

At the meeting, California Pharmacist Association (CPhA) representative David Keast commented that the FDA's response did not provide any regulatory citation which provides a basis for the 5% annual dollar volume; Keast noted that CPhA would like to work with the Board and national organizations to persuade the FDA to take an alternative approach to the 5% annual dollar volume and how it is measured in order to allow small pharmacies to continue in the way that they practice pharmacy.

The Board also discussed that under the FDA's position, a pharmacy could no longer purchase volume deals to split between other pharmacies, unless the pharmacy has a wholesale license. Board members noted that small pharmacies unable to buy products in large volume will be adversely affected by the wholesale licensure requirement. Following discussion, the Board directed staff to inform the FDA of its concerns regarding the implications of the requirements.

LEGISLATION

Future Legislation. The Department of Consumer Affairs (DCA) has agreed to carry amendments in its 1993 omnibus bill regarding the provision of oral consultation to patients by a pharmacist when medications are delivered by mail. *[12:4 CRLR 116]* The language would state that any pharmacy which ships or mails prescriptions to a resident of California shall provide telephone service, including a toll-free number for any long distance telephone calls, at least six days per week between the hours of 9:00 a.m. and 6:00 p.m. for patients to consult a pharmacist who has access to the patient's records. Written notice of the right to consultation and the toll-free number for long distance calls shall be included with or affixed to each container of drugs dispensed by mail.

Also as part of its omnibus bill, DCA plans to sponsor legislation that would give the Board authority to issue interim orders of license suspension. Although the Medical Board of California has such authority, the only option presently available to the Board of Pharmacy when a licensee poses a serious threat to the public safety is to obtain a temporary restraining order through the superior court. Proposed section 494 of the Business and Professions Code would permit the Board to issue an interim order suspending a license if affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of a provision of the Business and Professions Code or has been convicted of a crime substantially related to the practice of the licensee's profession or occupation, and that permitting the licensee to continue to engage in practice would endanger the public health, safety, or welfare.

LITIGATION

At its October 15 meeting, the Board went into closed session to consult with its legal counsel regarding ***Californians for Safe Prescriptions v. California State Board of Pharmacy***, No. BS019433, filed in Los Angeles County Superior Court in September. The petitioner, a nonprofit organization consisting of approximately

5,000 California-licensed pharmacists, sought a writ of mandamus and declaratory and injunctive relief in relation to the Board's alleged failure to comply with the Administrative Procedure Act (APA) in promulgating its pharmacy technician regulations.

Pursuant to its authority in Business and Professions Code sections 4008 and 4008.2, the Board attempted in 1989 to promulgate regulations denominated sections 1717 and 1793–1793.7, Title 16 of the CCR, which would establish a new licensing category of individuals who could perform dispensing-related tasks in pharmacies under the supervision of licensed pharmacists. *[9:4 CRLR 75]* However, over the next two years, OAL disapproved the proposed rules on three occasions, finding that they conflicted with statutes providing that only licensed pharmacists may compound and dispense medications. *[11:2 CRLR 97–98; 11:1 CRLR 83]* The Board then sponsored legislation authorizing it to promulgate the pharmacy technician regulations. Subsequently, AB 1244 (Polanco) (Chapter 841, Statutes of 1991) was enacted, authorizing pharmacy technicians to perform specified tasks. *[11:4 CRLR 105–06]* The Board re-proposed its pharmacy technician regulations in December 1991, held a public hearing on them in January 1992, adopted them subject to an additional 15-day public comment period, and resubmitted its proposed regulations to OAL in April 1992. OAL again rejected the regulations in June. Shortly after OAL's June disapproval, petitioner requested that another public hearing be held—pursuant to Government Code section 11349.4—prior to the Board's revision of the regulations and resubmission to OAL. Petitioner contended that the revisions would have to be significant to remedy OAL's objections, and that public discussion was therefore necessary.

On June 17, the Board modified its regulations and released the modified text for a 15-day comment period; it did not schedule another public hearing. Petitioner again requested a public hearing, this time pursuant to Government Code section 11346.8(a), and identified several provisions of the proposed regulations which were allegedly in conflict with the Board's enabling statute or were vague and ambiguous and needed clarification. The Board resubmitted the regulations to OAL without conducting an additional public hearing. On August 12, OAL approved the regulations as amended. Petitioner contended that, because a timely request was made pursuant to Government Code sections 11346.8(a) and 11349.4, a writ of mandamus is warranted ordering the Board to hold public hearings before implementing the regulations.

Petitioner also contended that the regulations must be declared invalid under Government Code section 11350 on the basis that they do not comply with the standards of consistency and clarity required of all regulations by the APA. Specifically, Petitioner contended that:

–Section 1793.2 of the regulations permits pharmacy technicians to perform virtually all the functions of a registered pharmacist; such a regulation is inconsistent with the legislative intent of Business and Professions Code section 4008.5.

–Allowing pharmacy technician applicants to qualify for registration based upon previous experience as a clerk-typist in a pharmacy is inconsistent with the legislative intent of Business and Professions Code section 4008.5(f), which requires applicants to have experience equivalent to employment as a pharmacy technician in assisting in the filling of prescriptions for an inpatient of a hospital or for an inpatient of a correctional facility.

–The regulations are inconsistent with legislative intent in that they permit the registration of a technician who has not obtained an associate of arts degree in a field of study directly related to the duties performed by a pharmacy technician.

–The regulations are inconsistent with legislative intent in that they permit registration of a technician who has had less than the one year of experience required by Business and Professions Code section 4008.5(f)(1)(D).

–The legislative requirement that a pharmacy technician be within the pharmacist's view at all times is not clearly or consistently implemented by the Board's proposed regulation requiring pharmacists to be fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

–Language in the regulations requiring that only a registered pharmacist may identify, evaluate, and interpret a prescription lacks sufficient clarity to satisfy Government Code section 11349(c).

Finally, Petitioners requested that the court issue a preliminary injunction enjoining the Board from implementing the regulations until further order of the court.

On November 2, the matter was heard by the Los Angeles County Superior Court; on December 15, the court entered judgment in the Board's favor. Among other things, the court held that the Board followed and complied with the APA in promulgating and adopting the pharmacy technician regulations; the Board was not legally compelled to hold a second hearing after the rejection of the regulations by OAL and their revision by the Board, as each change to the proposed regulations made by the Board was sufficiently related to the original text of the regulation that the public was adequately placed on notice the change could result from the originally proposed regulatory action; nothing in the regulations is inconsistent with the language or intent of Business and Professions Code section 4008.5; and the regulations do not lack clarity.

In ***Huggins v. Longs Drug Stores California, Inc.***, No. F016033 (Dec. 4, 1992), the Fifth District Court of Appeal held that a pharmacist's provision of incorrect dosage amounts for a prescription which the pharmacist knows or should know will be administered to an infant by the infant's parents constitutes negligent action directed at the parent caregivers, which may allow the caregivers to recover damages for negligent infliction of emotional distress.

Barbie and Robert Huggins' two-month-old son Kodee received an overdose of an antibiotic as a result of the pharmacy's negligence in providing instructions for medication dosage. The parents sued the pharmacy for damages for negligent infliction of emotional distress; in the complaint, the parents alleged that the pharmacy owed them a duty due to their relationship with the pharmacy. However, the trial court granted the pharmacy's motion for summary judgment, concluding that the parents failed to establish the elements necessary to support a cause of action for negligent infliction of emotional distress; the court held that the parents could not recover under the "bystander theory" because there was "no contemporaneous connection between the negligent act and the injury," and "[p]laintiffs cannot recover under a 'direct victim' theory as the duty not to be negligent is owed to their child."

On appeal, the Fifth District agreed that the parents may not recover under the bystander theory, under which the plaintiff's emotional distress results from a direct emotional impact from the sensory and contemporaneous observance of an accident, as contrasted with learning of the accident from others after its occurrence. The court noted that "the parents did not suffer emotional distress because of the overdose until they learned of the overdose from third parties."

However, the court noted that a much closer question is presented by the parents' alternative theory—that recovery is permissible under the "direct victim" theory;

the parents contended that the pharmacist, by providing the dosage amounts, assumed a duty to them because he knew or should have known they would have to administer the prescription to their infant son and would do so in accordance with his direction. The court agreed with this argument, finding that "the action of a pharmacist, in providing incorrect dosage under circumstances making it necessary for a caregiver to administer the medication, would constitute negligence directed at the caregiver who did so administer." The court found that "[i]t would be ludicrous to argue that an infant of two months could either take the medication without help or could comprehend the misdirection of the dosage. Therefore, under those circumstances, the negligent giving of instructions to the Huggins is, by its very nature, directed at the parents, rather than solely at the infant."

In reviewing the public policy implications of its holding, the court noted that it discerned "no public policy warranting insulation from liability of a pharmacist who provides instructions for a prescription intended for an infant and who negligently misstates the dosage, setting in motion a process which results in death or serious injury to the child. Rather, we hold that a parent or close relative who, as a caregiver, relies upon the directions and administers the prescription should be allowed recovery under such circumstances."

RECENT MEETINGS

At the Board's October 14 meeting, representatives of Hoag Memorial Hospital requested that the Board issue a hospital pharmacy permit to Hoag's Cancer Center, which provides outpatient services on its hospital license. In February 1992, Hoag's first such request was denied. Since the Center is not physically part of the hospital, the Board found that the drug distribution procedures were not acceptable insofar as patients at the Center are considered outpatients and the pharmacy must dispense drugs via a prescription instead of a chart order. At the October meeting, the Board again rejected Hoag's request, stating that current law does not authorize the Board to issue a hospital pharmacy permit unless the pharmacy is physically located in the hospital. Deputy Attorney General William Marcus added that unless a statutory change is made, the Board lacks authority to issue a pharmacy permit for Hoag's proposed distribution system; Marcus recommended that Hoag work with other interested parties to pursue such a change.

FUTURE MEETINGS

July 28–29 in Sacramento.
October 6–7 in Sacramento.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Interim Executive Officer: Curt Augustine
(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.

MAJOR PROJECTS

PELS to Interview Prospective Executive Officers. PELS is continuing its efforts to fill the Executive Officer (EO) position vacated by Darlene Stroup in August 1992. *[12:4 CRLR 118]* At PELS' November 20 meeting, Interim EO Curt Augustine reported that the Board had received 178 applications for the position. At this writing, the semifinal round of interviews for the position is scheduled to be held in Sacramento on January 14–15, with final interviews taking place in Los Angeles on January 28.

PELS Adopts Policy Regarding Disadvantaged Business Enterprises. At its November 20 meeting, the Board reviewed an opinion of the Department of Consumer Affairs' (DCA) Legal Office regarding whether the Professional Engineers Act or Professional Land Surveyors' Act permits an unregistered person who is a part owner of a professional engineering or land surveying business to qualify the business as a minority-owned, women-owned, or disadvantaged business enterprise (DBE) in order to obtain state contracts. DCA previously concluded that an unregistered person may be a part owner or manager of a professional business, provided (1) there is a professional engineer as an owner, part owner, or officer in charge of the engineering practice of the business; (2) all engineering work is prepared under the responsible charge of a professional engineer in the appropriate branch of professional engineering; and (3) the unregistered person limits his/her managerial role to aspects of the business which do not involve the practice of professional engineering.

However, recently-enacted AB 486 (Polanco) (Chapter 1329, Statutes of 1992) creates uniform certification criteria for DBE firms hired by state agencies and defines the requisite control which must be exercised by a disadvantaged owner to qualify the firm as a DBE; the new law cites Part 23, Title 49 of the Code of Federal Regulations as the source of the