



health agency providing hospice care may be dispensed upon an oral prescription. [*S. Jud*]

## ■ 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—six licensed optometrists and three public members.

## ■ MAJOR PROJECTS

**Board Proposes Regulatory Changes.** At its February 18 meeting, the Board authorized staff to commence the rulemaking process to amend sections 1502 (delegation of functions), 1510 (professional inefficiency), and 1535 (examination results), and to adopt new sections 1566 (release of prescriptions: notice required), Division 15, Title 16 of the CCR.

Section 1502 currently delegates and confers upon the Board Secretary or, in his/her absence from the Board's office, the Executive Officer, enforcement-related functions involving the filing of accusations, issuing notices of hearings, statements to respondents, statements of issues, and other powers and duties conferred by law to the Board. The Board's proposed amendment would delete the role of the Board Secretary in these matters, and instead delegate those enforcement functions to the Board's Executive Officer.

Business and Professions Code section 3090 authorizes the Board to revoke or suspend an optometrist's certificate of registration for unprofessional conduct, gross ignorance, or inefficiency in his/her profession. Proposed amendments to section 1510 would provide that—among other things—inefficiency in the profession is indicated by the failure to inform

any patient for whom treatment is prescribed, in terms understandable to that patient (or legal guardian, if appropriate), of the risks and benefits of the treatment.

Currently, the Board requires applicants examination for certificates of registration as optometrists to successfully complete the National Board Examination in Optometry as a condition of eligibility to take the Board's examination. Proposed amendments to section 1535 would provide that applicants for licensure must successfully complete the National Board Exam, the Board's practical exam, and the Board's law exam, and that applicants may fulfill these requirements in any sequence. However, the amendment states that in no case shall the total period in which the requirements are met exceed five years.

Finally, proposed new section 1566 would provide that each optometry office shall post in a conspicuous place a notice which clearly states the legal requirements and office policy regarding the release of eyeglass and contact lens prescriptions. [*13:1 CRLR 59*] The Board published notice of its intent to pursue these regulatory changes and, at this writing, is scheduled to hold a public hearing on the proposals on May 20 in San Diego.

In other rulemaking action, the Board decided at its February meeting not to attempt to overrule Department of Consumer Affairs (DCA) Director Jim Conran's rejection of its proposed amendments to section 1533 and repeal of section 1533.1, which would abolish the Board's examination appeal process. [*13:1 CRLR 59*] Instead, the Board will work with DCA's Central Testing Unit to arrive at an acceptable examination appeal process.

**UCLA Optometry Refresher Course Update.** The final segment of the optometry refresher course, designed by the Board in conjunction with UCLA, concluded in April. [*13:1 CRLR 60; 12:4 CRLR 114*] Students completing both the first segment on basic science and the second clinical segment participated in a May graduation ceremony at UCLA. Funding for the course was earmarked by the state for just one year; at this writing, there are no plans to repeat the course.

**Disclaimer Planned for Continuing Education.** At its February 18-19 meeting, the Board agreed to require all continuing education (CE) providers to provide a written or oral disclaimer clarifying whether participation in the course is for "information only," or whether the course qualifies the individual to perform a certain procedure. In recent disciplinary actions, optometrists have contended that

they believed a particular procedure was within the scope of optometry in California because it was the subject of a Board-approved CE course. The disclaimer would clarify that participants in CE classes retain personal responsibility to verify whether state law allows the individual to include the procedure in his/her practice.

## ■ LEGISLATION

**AB 1894 (Polanco)**, as introduced March 5, would authorize ancillary personnel who work under the supervision of an optometrist to assist in the preparation of the patient and the preliminary collection of data. The bill would prohibit an optometrist from permitting ancillary personnel to collect data requiring the exercise of professional judgment or skill of an optometrist, perform any subjective refraction procedures, contact tonometry, data analysis, or diagnosis, or prescribe and determine any treatment plan. [*A. Health*]

**AB 2020 (Isenberg)**, as amended May 19, would provide that the practice of optometry includes, among other things, the examination of the human eye, or its appendages and adnexa, and the analysis and diagnosis of conditions of the human vision system, either subjectively or objectively. This bill would delete an existing requirement that the Board designate pharmaceutical agents which may be used by optometrists in examining the human eye and instead authorize the use of specified diagnostic pharmaceutical agents. It would also authorize the use, prescribing, and dispensing of specified therapeutic pharmaceutical agents to a patient by an optometrist for the purposes of treating the human eye, or its appendages or adnexa, for any disease or pathological condition by an optometrist who meets specified requirements. The bill would establish a seven-member pharmaceutical advisory committee with a prescribed membership to provide advice to the Board as to the use of diagnostic and therapeutic agents. Under this bill, only optometrists who meet several examination and training requirements and agree to accept Medi-Cal patients are permitted to use, dispense, or prescribe therapeutic pharmaceutical agents. AB 2020 would also make it a misdemeanor for any person licensed as an optometrist to refer a patient to a pharmacy that is owned by the licensee or in which the licensee has proprietary interest. This bill is sponsored by the California Optometric Association and is opposed by the California Medical Association. [*A. Floor*]

**SB 908 (Calderon)**, as introduced March 4, would provide that the terms "license" and "certificate of registration"



are deemed to be synonymous for the purposes of the provisions of law regarding the licensure and regulation of optometry. [S. B&P]

**SB 921 (Maddy)**, as introduced March 4, would provide that it is unprofessional conduct for an optometrist to fail to advise a patient in writing of any pathology that requires the attention of a physician when an examination of the eyes indicates a substantial likelihood of any pathology. [S. B&P]

**SB 842 (Presley)**, as amended April 13, would authorize the Board to issue interim orders of suspension and other license restrictions, as specified, against its licensees. [A. CPGE&ED]

## ■ LITIGATION

In *California Optometric Association (COA) v. Division of Allied Health Professions, Medical Board of California*, No. 531542 (filed January 11 in Sacramento County Superior Court), and *Engineers and Scientists of California (ESC), et al. v. Division of Allied Health Professions, Medical Board of California*, No. 706751-0 (filed October 8, 1992 in Alameda County Superior Court), COA and ESC challenge the validity of DAHP's medical assistant regulations.

Following the enactment of SB 645 (Royce) (Chapter 666, Statutes of 1988), it took DAHP over three years to adopt section 1366, Title 16 of the CCR, its regulation defining the technical support services which unlicensed medical assistants (MAs) may perform and establishing standards for appropriate MA training and supervision. During the lengthy rulemaking process, DCA rejected DAHP's proposed regulations twice and the Office of Administrative Law rejected them once before finally approving them in March 1992.

During the rulemaking hearings, COA and the Board of Optometry objected to language in the proposed regulations stating that MAs are permitted to perform "automated visual field testing, tonometry, or other simple or automated ophthalmic testing not requiring interpretation in order to obtain test results, using machines or instruments, but are precluded from the exercise of any judgment or interpretation of the data obtained on the part of the operator." [12:1 CRLR 88-89] However, DAHP overruled the objections and included this language in its final regulations. COA and ESC claim that section 1366 is invalid because the conduct authorized is beyond the scope of DAHP's authority and conflicts with DAHP's enabling statutes; further, it conflicts with Business and Professions Code sections

3040 and 3041 (which define the practice of optometry and prohibit unlicensed persons from engaging in optometry). At this writing, the Attorney General has filed an answer on behalf of DAHP; no court hearing has been set.

## ■ RECENT MEETINGS

At the February 18 meeting, Executive Officer Karen Ollinger reviewed previously-approved budget changes, and reported that the Board is close to covering its costs. Ollinger also announced that the occupational analysis by Human Resource Strategies is proceeding on schedule. [13:1 CRLR 59] Finally, Board President Thomas Nagy, OD, announced that Board member Stephen R. Chun, OD, was named Optometrist of the Year at the annual California Optometric Association Congress.

## ■ FUTURE MEETINGS

November 17-18 in Orange County.

## 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.

## ■ MAJOR PROJECTS

**Restructuring the Enforcement Unit.** As the Board has not augmented its

enforcement program in at least ten years, it spent considerable time at its October 1992 meeting discussing the need to expand the program in light of the increasing number of pharmacies and licensed pharmacists in California, the establishment of new registration programs such as medical device retailers and pharmacy technicians, and changes in the law governing the practice of pharmacy. [13:1 CRLR 60]

At the Board's April 28-29 meeting, Executive Officer Patricia Harris reported that the Governor and the budget subcommittees in both houses of the legislature have tentatively approved a \$703,000 increase to the Board's 1993-94 budget to establish eight additional enforcement unit positions: five inspectors, one supervising inspector, one consumer services representative, and one office technician. The increase in staff will enable the Board to establish a public assistance unit staffed by complaint handlers to assist consumers who call with questions regarding pharmacy services and pharmacists; complaints would be opened by this unit and referred to the inspection staff for investigation. This process is expected to enable Board inspectors to focus their efforts on inspection, not complaint processing. Harris cautioned that the full legislature has yet to pass the Governor's budget, and that the budget augmentation may be revised or deleted.

**Board Discusses Request for Regulatory Change.** At its January 20-21 meeting, the Board noted that it had received several requests to revise section 1719(c), Title 16 of the CCR, which provides that, as of April 16, 1992, all candidates for the pharmacist licensure examination who are graduates of a foreign pharmacy school (any school located outside the United States) must demonstrate proficiency in English by achieving a score of at least 220 on the Test of Spoken English administered by the Educational Testing Service. Board member Gilbert Castillo noted that the issue was originally discussed by the Board and referred to its Competency Committee for evaluation; the Committee held preliminary hearings and invited public input. Following discussion, the Board unanimously agreed that it is in the best interest of the consumer to continue to require that foreign pharmacy graduates pass the Test of Spoken English.

**Board Considers Electronic Transmission of Prescriptions.** At the Board's January 20-21 meeting, the Board's Committee on Electronic Transmission and Faxing of Prescriptions recommended that the Board pursue statutory and regulatory changes to allow for the electronic