



land surveyor or registered civil engineer submitting the record may then make the agreed changes and note on the map those matters which cannot be agreed upon, and resubmit the survey. As introduced March 3, this bill would require the licensed land surveyor or registered civil engineer to make the agreed changes and note on the map any specific matters which cannot be agreed upon, before resubmission. The bill would also provide that the land surveyor or civil engineer and county surveyor shall not be prevented from resolving their differences prior to resubmission.

The bill would also provide that a record of survey may also be prepared and filed for the express purpose of (1) rescinding the effect of prior matters of disagreement, as specified, or (2) rescinding the effect of prior county surveyor opinions, as specified. The bill would provide that a record of survey amended and filed pursuant to this provision shall include an explanation of how these matters of disagreement or opinion were resolved. [A. Floor]

SB 296 (Ayala). Existing law permits a licensed land surveyor to offer to practice, procure, and offer to procure civil engineering work incidental to his/her land surveying practice, even though he/she is not authorized to do that work, provided all civil engineering work is performed by or under the direction of a registered civil engineer. As introduced February 17, this spot bill would make technical, nonsubstantive changes to existing law. [S. Rls]

AB 358 (Eastin). Existing law requires that all contracts awarded by any state agency, department, officer, or other state governmental entity for construction, certain professional services, material, supplies, equipment, alteration, repair, or improvement have statewide participation goals of not less than 15% for minority business enterprises, not less than 5% for women business enterprises, and not less than 3% for disabled veteran business enterprises. Existing law defines minority business enterprise, women business enterprise, and disabled veteran business enterprise for purposes of these provisions.

As amended March 24, this bill would add to these definitions the requirement that if a business concern performs engineering or land surveying services, the persons who control the management and daily operations of the business shall be appropriately licensed or registered to render these services. In addition, the bill would require that if a business concern performs more than one of these professional services, a person who controls the

management and daily operations of the business need only be licensed or registered to render any one of these individual services. [A. U&C]

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

■ LITIGATION

In *Center for Public Interest Law (CPIL) v. Board of Registration for Professional Engineers and Land Surveyors*, No. 371217 (Feb. 5, 1993), the Sacramento County Superior Court ruled against CPIL in its Public Records Act (PRA) suit against the Engineers' Board. In January 1991, CPIL intern Bill Braun filed a PRA request with the Board seeking copies of closed consumer complaints regarding the billing practices of professional engineers. The Board denied the request, citing Government Code section 6254(f), the "investigatory files" exemption to the PRA. In its lawsuit, CPIL questioned the applicability of this exemption to closed consumer complaints about billing disputes, since the Board disclaims jurisdiction over billing disputes and refuses to investigate them; in other words, it would never open an "investigatory file" on a complaint alleging a billing dispute because it maintains that such complaints are not within its disciplinary jurisdiction. In its decision, the court relied on a 1974 case in which an appellate court ruled that bare consumer complaints fall within the "investigatory files" exemption, without regard to whether an investigatory file is ever created. The court disagreed with CPIL's argument that the 1974 case should be overruled because the PRA has been significantly amended since then. The court also disagreed with CPIL's argument that PELS is a "law enforcement agency" under the Act, thus requiring it to make available records specified in section 6254(f)(2).

■ RECENT MEETINGS

At its January 14 meeting, the Board awarded contracts to CTB MacMillan/McGraw-Hill for testing services for PELS' geotechnical engineering examination from July 1, 1993 through June 30, 1995, and for PELS' professional land surveyor examinations effective May 1, 1993 through April 30, 1995.

At its January 29 meeting, PELS unanimously agreed to present outgoing Interim Executive Officer Curt Augustine with a resolution in appreciation of the outstanding work he performed for the Board since the resignation of Darlene

Stroup; the Board subsequently presented the resolution to Augustine at its April 23 meeting.

Also at its January 29 meeting, PELS unanimously agreed to allow first-time civil engineer applicants to apply for the October special civil examination and adopted the following policy. Applications for examination as a civil engineer will be evaluated for the October special civil examination and all portions of the civil engineering examination offered in April; applicants must postmark their applications by the final filing date published for the examination date for which they are applying; applications postmarked after that date will be evaluated for the next scheduled examination; and a fee of \$175 will be charged for any or all parts of the October special civil examination, and for any or all parts of the April civil engineering examination.

At its March 12 meeting, PELS unanimously decided that no postgraduate degree shall be given more than one year of experience credit, and that it shall not be allowed to cure a deficient undergraduate degree.

Also at its March meeting, the Board directed legal counsel to prepare an opinion on whether the definition of civil engineering, which includes appraisals and valuations, conflicts with the practice described in the Real Estate Appraisers Act. At PELS' April 23 meeting, Executive Officer Harold Turner reported on the legal opinion which was issued in response to the Board's inquiry. According to Turner, even though both Acts refer to appraisals, they are not in conflict; civil engineers do not have to be registered real estate appraisers in order to perform engineering appraisal functions, not must real estate appraisers be registered civil engineers to engage in their activities.

■ FUTURE MEETINGS

August 27 in Sacramento.
October 8 in Los Angeles.
November 19 in San Diego.

BOARD OF REGISTERED NURSING

Executive Officer: Catherine Puri
(916) 324-2715

Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 *et seq.*, the Board of Registered Nursing (BRN) licenses qualified RNs, certifies qualified nurse-midwifery applicants, establishes accreditation require-



ments for California nursing schools, and reviews nursing school curricula. A major Board responsibility involves taking disciplinary action against licensed RNs. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR).

The nine-member Board consists of three public members, three registered nurses actively engaged in patient care, one licensed RN administrator of a nursing service, one nurse educator, and one licensed physician. All serve four-year terms.

The Board is financed by licensing fees, and receives no allocation from the general fund. The Board is currently staffed by 90 people.

MAJOR PROJECTS

BRN to Impose Fines for Violations of the Nursing Practice Act. Pursuant to Business and Professions Code section 125.9, BRN is authorized to establish, by regulation, a system for the issuance of citations and fines against licensees who violate the Nursing Practice Act and its implementing regulations; at its February 4-5 meeting, BRN unanimously approved a staff proposal for the implementation of such a system. The Board hopes that by establishing a fine-based system, violations that would normally be referred to the Attorney General's Office for prosecution could instead be handled through fines, saving BRN substantial administrative costs; in addition, the new system may be able to handle less serious violations that would have previously escaped enforcement, since pursuing them would have been cost-ineffective.

The proposed citation process will begin with a comprehensive investigation of the alleged violation; before the Board may issue a citation, the investigation must uncover sufficient evidence establishing the violation. According to the proposed plan, only the Executive Officer or his/her designee would be authorized to issue citations. Citations would be categorized as Class A, B, or C violations, with Class A representing the most serious infractions and Class C the least serious or technical violations. In determining the class, the Board will consider the nature and severity of the violation; consequences of the violation, including potential or actual patient harm; the history of any previous violations; the intent or purpose for committing the violation; and whether the nurse knowingly committed the infraction.

Under the proposal, BRN will determine fines according to the seriousness of

the infraction, but does not plan to issue fines in excess of \$2,500. An RN may informally contest a citation within ten days by requesting in writing that the Executive Officer reconsider the decision. Within thirty days from receipt of the request, a review conference will be held, and a written decision and the reason for that decision will be sent to the RN. Alternatively, the RN may formally contest the fine by requesting an administrative hearing, which would be conducted pursuant to the Administrative Procedure Act. Failure to pay the fine after a final decision is made will result in its inclusion in the RN's license renewal fee. BRN does not plan to renew any RN license without payment of the renewal fee and the additional fine. At this writing, BRN has not yet published notice of its intent to pursue this regulatory proposal in the *California Regulatory Notice Register*.

New Disciplinary System to Include Recovery of Investigative Costs. In addition to the issuance of fines, BRN decided at its April 22-23 meeting to modify its disciplinary system by implementing a "cost recovery system" to recover its investigative costs against an RN who has violated licensing laws. The Board's action is authorized by AB 2743 (Frazee) (Chapter 1289, Statutes of 1992), which added section 125.3 to the Business and Professions Code authorizing Department of Consumer Affairs (DCA) boards and bureaus to seek recovery of their costs of investigating violations of their licensing laws.

The Board may initiate cost recovery by requesting the administrative law judge (ALJ) to direct the licensee, whom the ALJ has found guilty of violating the applicable licensing law or regulations, to pay the Board's costs of investigating the case; an ALJ will implement cost recovery only when requested by the Board. Moreover, BRN may recover only those costs incurred up to the date of the hearing; such costs include charges for services by DCA's Division of Investigation, consultant services, expert witness review, and investigation costs incurred by the Attorney General's Office. BRN's hearing costs, including the Deputy Attorney General's time for trying the case, the Office of Administrative Hearings' ALJ time, and expert witness fees for hearing appearances are not recoverable.

A licensee who fails to comply with an ALJ's order for cost recovery may not have his/her license renewed or reinstated; BRN may also choose to initiate a civil action against the licensee to enforce the recovery order. If a licensee demonstrates financial hardship, however, BRN may

choose to grant him/her up to one year from the effective date of the decision to reimburse the Board for its investigative costs; under such an agreement, BRN could conditionally renew or reinstate the license for that year.

BRN Responds to Criticism of State Board Diversion Programs. During the past ten years, several DCA boards have developed and implemented "diversion programs," which may—depending on the scope of the program—allow a licensee detected as substance-abusing, mentally ill, or sexually abusive to enter into a board-designed program for rehabilitation. These licensees are diverted from normal disciplinary proceedings, such as a public license revocation proceeding, to a less severe and confidential rehabilitation track for monitoring and mandatory counseling; theoretically, these programs seek to retain the valuable skills of a licensee while protecting public safety.

In a recent article published in the *California Regulatory Law Reporter*, Thomas O'Connor, Executive Officer of the Board of Psychology, criticized state board diversion programs for failing to protect consumers and for allowing licensees who have harmed consumers to escape justice and accountability. [12:4 CRLR 4] Specifically, O'Connor faulted diversion programs for allowing licensees to continue practicing with little or no interruption; for allowing diversion program facilitators to monitor and evaluate the same patients who are paying them; and for the absence of independently-conducted studies published in scientific or professional journals establishing the effectiveness of these programs.

In a February 17 letter to DCA Director Jim Conran, and again at its April 22-23 meeting, BRN responded to these general criticisms regarding occupational licensing agency diversion programs, and articulated factors which it believes distinguish its Diversion Program from those of other DCA boards. First, the Board noted that participation in its Diversion Program does not shield any nurse from possible criminal or civil prosecution; an RN may be held responsible for his/her actions and, if he/she fails to complete the rehabilitation program, he/she is referred for disciplinary action. Second, BRN pointed out that—unlike other diversion programs—its rehabilitation plan is not available to sex offenders or licensees who have caused patient harm or death; it is also not an option for RNs who have sold drugs or who have been reported because of poor nursing skills. BRN also noted that its program does not involve monitoring of participants by persons with a vested in-



terest or conflict of interest; the Board appoints three RNs, a physician, and a public member to serve as a rehabilitation planning committee. The committee develops a rehab program for the participant, enters into a contract with the participant, and (once the participant has been deemed able to return to work) coordinates with a worksite monitor who has full knowledge of the participant's diversion contract. Finally, if a licensee agrees to enter BRN's Diversion Program, his/her license is immediately suspended and he/she is removed from the workplace; only after the licensee has proven rehabilitation to the committee—all of whom are experts in chemical dependency and mental illness—may he/she return to the practice of nursing.

BRN contended that each diversion program should be judged independently, and according to the particular needs and practices of the industry. According to BRN, over 50% of the participants in its Diversion Program for alcohol abuse have successfully completed the program, and were able to maintain sobriety such that they could safely practice nursing; BRN also stated that out of the 278 participants who have completed its program, only twelve have suffered subsequent discipline.

Board Announces Policy for Mental Health Participants in the Diversion Program. Since October 1985, the Board has allowed nurses suffering from mental illness to enter into its Diversion Program for potential rehabilitation. At its February meeting, BRN adopted policies regarding the criteria to be used for admitting a mentally impaired nurse into the program, and criteria to be used in determining when an RN in the program as a mental health client is ready to successfully complete the program. The Board will use these criteria in addition to the formal requirements set forth in sections 1447 and 1447.2, Title 16 of the CCR.

According to BRN's policy, if mental illness is the primary reason for referral to the program, or if mental illness is suspected as a primary diagnosis in addition to chemical dependency, a licensed mental health practitioner must submit to BRN a report consisting of the patient's diagnosis, prognosis, course of treatment, and any other factors which would indicate his/her ability to safely provide nursing care. Based on this report, the Board's Diversion Evaluation Committee (DEC) will admit or deny the participant; subsequent to admission, DEC will develop an appropriate rehabilitation program for each mentally ill participant. BRN stated in its policy that it will cover the cost of

the initial assessment by the mental health practitioner; any other medical or psychiatric examinations, however, must be paid for by the program participant.

BRN's policy also requires that a mental health client participate in the Diversion Program for a minimum of two years, during which the participant must complete all program parameters, including compliance with the psychiatrist's therapeutic regimen, maintaining negative body fluid reports consistent with rehabilitation requirements, and receiving letters from mental health practitioner(s) supporting successful completion. In order to successfully complete the program, a participant must demonstrate the ability to recognize his/her own cycle of accelerated symptoms; possess the ability to express with a reasonable degree of clarity a self-knowledge about mental health and his/her personal lifestyle; have no evidence of unrecognized psychiatric symptoms; and, if psychiatric symptoms are identified, demonstrate the ability to seek prompt appropriate treatment.

An RN may be terminated from the program if he/she does not comply with the requirements of the program, and/or because of the chronic and serious nature of the disease process. If an RN is terminated from the program, BRN may refer him/her to vocational rehabilitation for career retraining and/or recommend license revocation.

Education/Licensing Committee Goals and Objectives. At BRN's April meeting, the Education/Licensing Committee announced the following goals for 1993-94:

- develop systems for gathering and analyzing information about nursing education in California;

- promote uniformity in the interpretation of nursing program approval criteria and guidelines;

- increase and facilitate communication with nursing educators regarding the Board's policies and regulations for nursing programs, the approval process, the licensing exam, and other issues affecting nursing education;

- develop a process assuring a job-related national examination and diligent continuation of the Board's commitment for eliminating any artificial barriers to licensure;

- assure a smooth transition from the National Council Licensure Exam (NCLEX) paper-and-pencil testing to NCLEX Computer Adaptive Testing (CAT) [13:1 CRLR 67; 12:4 CRLR 122]; and

- develop an effective and comprehensive system for monitoring the con-

tinuing education program and assuring compliance of providers and licensees with BRN requirements.

Diversion/Discipline Committee Goals and Objectives. Also at BRN's April 22-23 meeting, the Diversion/Discipline Committee announced its goals and objectives for 1993-94, which include the following:

- continue information dissemination to increase nurses', employers', and the public's awareness of the Diversion Program and rehabilitation for RNs whose practice may be impaired due to chemical dependency and/or mental illness;

- explore options and develop a plan for more timely action on disciplinary matters, including expediting cases filed with the Attorney General's Office and processing mail votes on proposed disciplinary decisions;

- conduct a study to evaluate the quality and cost-effectiveness of investigative reports and techniques, including the need for internal non-sworn investigative personnel; and

- conduct an Enforcement Enrichment Workshop on an annual basis for Board members and staff to improve understanding of the enforcement and discipline policies and procedures.

Board Issues Advisory Statement Regarding Task Assignment to Unlicensed Caregivers. Beginning in 1989, BRN has noticed a trend of legislation which has allowed unlicensed caregivers in selected settings to perform tasks which had previously been performed only by licensed nurses. According to BRN, such legislation put RNs in the position of supervising unlicensed caregivers. Recently, the American Nurses Association urged state nursing boards to issue advisories regarding the use of unlicensed assistive personnel. At its April meeting, BRN approved such an advisory statement, which will be mailed to RNs throughout California.

Among other things, BRN's advisory discusses tasks which may not be assigned to unlicensed caregivers. For example, tasks may not be assigned concerning a patient who is "medically fragile"; BRN defines a medically fragile patient as one whose condition can no longer be classified as chronic or stable, and for whom performance of the assigned task could not be termed routine. This includes patients experiencing an acute phase of illness, or who are in a debilitated or unstable state that would require ongoing assessment by an RN.

The advisory also states tasks which, in BRN's opinion, may be safely assigned to unlicensed assistive personnel, such as



basic health and hygiene tasks including bathing of the patient, routine feeding, obtaining vital signs, and assisting the patient in walking and other ambulatory movements. More sophisticated tasks, such as simple urinary drainage and dressing changes for wounds, may also be assigned if the RN supervises the unlicensed assistive personnel and regularly assesses the patient to ensure his/her safety. In either case, the specific task which the RN assigns must be a defined procedure not requiring independent judgment and one which, in the RN's judgment, poses minimal risk of harm to the patient.

■ LEGISLATION

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

AB 518 (Woodruff), as introduced February 18, would require BRN to conduct a study regarding clinical nurse specialists and the use of the title "clinical nurse specialist," in consultation with certain organizations and interested parties; this bill would require BRN to report the results of the study to the legislature on or before January 1, 1995. [S. B&P]

AB 1807 (Bronshvag). Existing law authorizes BRN to issue interim permits to practice nursing pending the results of the first licensing examination taken by an applicant, and requires the Board to notify the applicant of termination of the interim permit by certified mail upon failure of the examination; existing law authorizes an applicant who fails the examination to be reexamined as deemed appropriate by the Board. As amended May 3, this bill would limit the authorization to practice under an interim permit to a maximum of six months; require BRN to send the notice by first-class mail; and provide that an applicant may not be reexamined more frequently than once every three months.

Existing law authorizes the issuance, upon the submission and approval of an application and payment of a prescribed fee, of a temporary certificate to practice as a certified nurse midwife, certified nurse practitioner, or certified nurse anesthetist for a period of six months. This bill would also authorize issuance of a temporary certificate to practice as a certified public health nurse.

Existing law authorizes disciplinary action against a nurse for unprofessional conduct and for certain other actions, as prescribed. This bill would revise these provisions to make the denial, revocation, suspension, or restriction of a license, or other disciplinary action against a nurse

taken by another state or other government agency, part of the definition of unprofessional conduct that is grounds for discipline in this state.

Finally, this bill would provide that an applicant for renewal of a nursing license who receives his/her license after payment of fees with a check that is subsequently returned unpaid shall not be granted a renewal until the amount owed is paid, including any applicable fees. [A. W&M]

AB 1445 (Speier), as amended May 4, would require general acute care hospitals, acute psychiatric hospitals, and special hospitals to allocate a sufficient number of RNs and other licensed personnel to provide specified ratios of licensed staff to patients. This bill would also require general acute care hospitals, acute psychiatric hospitals, and special hospitals to adopt written policies and procedures for the training and orientation of nursing staff. This bill would require that if licensed nursing personnel have not worked in a given patient care unit or are temporarily assigned, a competency validation be completed prior to assigning that person total responsibility for patient care. This bill would prohibit these hospitals from utilizing certain personnel to perform prescribed functions that require scientific knowledge or technical skill. [A. Health]

SB 1148 (Watson), as amended April 29, would require each health facility to make a nurse patient advocate available to receive complaints from patients or staff relating to inappropriate denial of treatment, limitations on treatment, early discharge or transfer, or unnecessary treatments or procedures. This bill would require that a nurse patient advocate be employed by the state Department of Health Services and be licensed as a registered nurse. The bill would require that the nurse patient advocate investigate any complaints, and report his/her findings to the Department. This bill would also prohibit any licensed personnel or other staff member of the health facility from being subject to discipline for providing information to a nurse patient advocate, or for referring a patient or relative of a patient to the nurse patient advocate. [S. H&HS]

SB 1052 (Watson). Existing law requires skilled nursing facilities and intermediate care facilities to adopt a training program for nurse assistants that meets standards established by the state Department of Health Services; provides for the certification of nurse assistants who meet prescribed qualifications; requires that certified nurse assistants complete 24 hours of approved in-service training every year; and makes the renewal of cer-

tification, which occurs every two years, conditional upon completion of the required training. As introduced March 5, this bill would instead require that a certified nurse assistant complete 48 hours of in-service training every two years, and would require that at least twelve of the 48 hours be completed in each of the two years. This bill would also revise the approved sources from which the training may be obtained to include in-service training taught by a director of staff development for a licensed skilled nursing or intermediate care facility who has been approved by the Department. [S. Floor]

■ RECENT MEETINGS

At its February 5 meeting, BRN announced special license renewal provisions for military and civilian RNs serving in any branch of the U.S. armed services during Operation Restore Hope in Somalia; BRN will waive both its continuing education requirements and late penalty fees for these renewal applicants if (1) their license was valid at the time of entering the armed services or volunteering for Operation Restore Hope; (2) they applied for renewal while still in military or civilian service, or no later than six months after returning from their stay in Somalia; (3) they include a copy of their orders or other proof of military/civilian service; and (4) they include the appropriate renewal fee along with their application to BRN.

Also at its February meeting, the Board distributed and discussed its annual report for 1992. The report covers all aspects of BRN's activities, ranging from its new licensing provisions to management and budgeting strategies implemented during the past year. Highlights of the report included BRN's improved telecommunications system; reduction of data processing costs by deleting outdated license records; reduction of travel costs by limiting the number of both Board and committee meetings; and establishment of an on-line license verification system, which allows hospitals, health maintenance organizations, and public agencies to verify license validity before offering employment to RNs.

At its April 22-23 meeting, BRN announced its participation in the Alpha/Beta Tests for Computer Adaptive Testing (CAT). [13:1 CRLR 67] The Alpha test is designed to allow the test vendor to conduct an internal assessment of operational aspects related to computer functioning and data transmissions; the Beta test consists of both operational and psychometric tests of the CAT system.