



speculated that it might be too easy for facility administrators to shift responsibility for hazardous conditions to other employees; Executive Officer Nikkel responded that this reaction is not uncommon.

Also at the September 8 meeting, the Board elected Dr. Orrin Cook to serve as Vice-Chair; Nancy Campbell is the current Chair of BENHA.

■ FUTURE MEETINGS

December 14 in San Francisco.

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 Holds Hearing on Proposed Regulatory Changes. At its May 20–21 meeting, the Board conducted a regulatory hearing on its proposal to amend sections 1502 (delegation of functions), 1510 (professional inefficiency), and 1535 (examination results), and to adopt new section 1566 (release of prescriptions: notice required), Division 15, Title 16 of the CCR. [13:2&3 CRLR 99]

- Amendments to section 1502 would delegate and confer solely upon the Board's Executive Officer—instead of upon the Board Secretary—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 received no public comment regarding this amendment and unanimously adopted it; this change awaits review and approval by the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL).

- Amendments to section 1510 would have provided that—among other things—inefficiency in the optometric profession includes 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. The California Optometric Association (COA) opposed the proposed changes to section 1510, contending that the requirement would be unfair to optometrists since other healing arts practitioners are not under a similar mandate. This position was echoed by UC Berkeley School of Optometry Dean Anthony Adams, OD, who opined that “[t]o single out a profession's *detailed* obligations to a patient appears to be not only unnecessary but also to imply some specific past indiscretions unique to optometry” (emphasis original). Adams also claimed that the proposed disclosure requirement “neither informs the public nor protects it” and urged that the language “not be adopted until general and appropriate language is adopted simultaneously by all health care professions.” Following discussion, the Board unanimously rejected the proposed changes to section 1510.

- Amendments to section 1535 would have provided 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 amendments would provide that in no case shall the total period in which the requirements are met exceed five years. COA objected to this proposal, opining that by allowing applicants to sit for the Board exam without first passing the National Board Exam, the Board could possibly be admitting candidates who have not proved academic competency. Following discussion, the Board unanimously rejected the proposed changes to section 1535.

- Proposed new section 1566 would require each optometry office to post in a conspicuous place a notice which clearly states the legal requirements and office policy regarding the release of spectacle and contact lens prescriptions. Optometrists are legally required to release spectacle lens prescriptions to patients upon request, but are not required to release contact lens prescriptions. According to Executive Officer Karen Ollinger, the Board receives approximately five consumer complaints every day indicating problems in optometrist-patient communication; this regulatory proposal attempts to address at least some of these communication problems by requiring optometrists to notify consumers regarding their policy on the release of prescriptions. Again, COA opposed this disclosure proposal, contending that the disclosure requirement would be “overly burdensome” and complaining that no other profession has such a requirement (although physicians

routinely hand patients their prescriptions, enabling patients to fill their prescriptions at the pharmacy of their choice). Department of Consumer Affairs (DCA) legal counsel Robert Miller suggested that the proposed language be modified to provide that the notice shall, at minimum, contain the specified information; this would provide optometrists with the discretion to add information to the notice as they see fit. Even as modified, the regulation continues to allow optometrists to release contact lens prescriptions at their own discretion. Following discussion, the Board adopted the modified version of proposed section 1566 by a 6–2 vote; optometrists Pamela Miller and Thomas Nagy opposed the motion. At this writing, the modified language has not yet been released for an additional fifteen-day public comment period; the proposal also awaits review and approval by DCA and OAL.

New Law Book Completed. The Board recently released *Laws Relating to the Practice of Optometry*, which contains up-to-date provisions relating to the practice of optometry and the functioning of the Board from the Business and Professions Code, the Government Code, the Corporations Code, and the Health and Safety Code, as well as the California Code of Regulations and Federal Trade Commission rulings. The book is available from the Board for \$10.

Consumer Education Pamphlet Now Available. The Board's Public Relations and Consumer Education Committee is now distributing a consumer education pamphlet to consumer organizations, senior centers, consumers who file complaints about optometrists, and other consumers upon request. The pamphlet includes an explanation of the relative responsibilities of various eye care professionals and also describes how optometrists may be disciplined. [13:1 CRLR 59]

Final Report on UCLA Optometry Refresher Course Completed. On June 28, Feelie Lee, Ph.D., submitted the final report on the UCLA Extension Optometry Review Course; the final segment of this optometry refresher course, designed by the Board in conjunction with UCLA, concluded in April. [13:2&3 CRLR 99; 13:1 CRLR 60; 12:4 CRLR 114]

In 1990, the legislature required the Board to spend \$300,000 from its special fund to finance the development of the refresher course, primarily as a way to assist foreign-trained optometrists to become licensed in California. The Board was required to fund the course because it has never approved a “remedial” or “refresher” course for foreign-trained optometrists. Instead, it reviews applications



from foreign graduates to determine whether the foreign curriculum is equivalent to U.S. standards, rejects these applications at a very high rate and refuses to allow these applicants to sit for the licensing exam, and effectively forces foreign-trained optometrists to repeat their entire optometric training in California because they have no alternative—the Board has never approved a refresher course to remediate alleged deficiencies in the foreign curricula. Dissatisfied with this course of events, Senate President pro Tem David Roberti carried 1987 legislation which—effective January 1, 1991—prohibited the Board from refusing to admit a foreign-trained optometrist to the licensing exam. Because the Board finally created the refresher course in 1990, Senator Roberti authored subsequent legislation extending this date to January 1, 1994. [12:2&3 CRLR 131-32; 10:4 CRLR 97; 9:3 CRLR 64-65]

In the final report, Dr. Lee explained that UCLA had to overcome several substantial obstacles in developing and teaching the refresher course:

—there is no existing model of an optometry refresher course, such that UCLA had to design it from scratch;

—UCLA has no school of optometry, and the two existing schools of optometry in California (UC Berkeley and the Southern California College of Optometry) declined to offer faculty or be formally affiliated with the course; and

—recruitment of faculty to teach the refresher course was especially difficult, partly due to—according to Dr. Lee—“the ‘ban’ on faculty at SCCO from participating in the program, even though many had expressed interest in teaching.” The Board finally assisted in recruiting for faculty through its newsletter in 1992.

Dr. Lee noted that the program eventually overcame these barriers, and 37 instructors participated in teaching the eighteen-month review course to 41 students. Of these 41 students, twenty took the basic sciences portion of the national board exam in August 1992; one passed, and eight others came within 15 or fewer points of passing. Eight students took the April 1993 clinical sciences portion of the national board exam; the results of this exam are still pending at this writing.

Although the refresher course was funded and developed as a pilot program on a one-time basis, Dr. Lee stated that there is a market for future offerings of the course. The course could be marketed to graduates of foreign optometry schools, residents from out-of-state who must sit for the national and state exams within five years of their move, and U.S. graduates who fail the national board exam—

the current failure rate averages 40% and was 50% in 1992. While Dr. Lee acknowledged that the current “political and professional environment” may not be conducive to an extension of state funding for the program, he noted that the Board still needs to establish a “reasonable equivalency” standard by January 1, 1994; on that date, it loses its ability to determine equivalency and deny admission to the licensing exam. The Board attempted to extend this date to January 1, 1996 through AB 1807 (Bronshvag), but that bill stalled on the Assembly floor late in the legislative year and was not passed (see LEGISLATION).

Finally, Dr. Lee proposed a variety of program changes, such as collapsing the eighteen-month program into a one-year offering, increasing the \$3,000 course fee (if state underwriting is no longer available), developing discrete modules that can be offered separately to refresh U.S.-trained optometrists who need select review, alternating the program’s location from northern California to southern California, redesigning the program format to include week-long or intense weekend sessions on specific topics, and involving a tri-sponsorship of the program through UC Berkeley, UCLA Extension, and Kaiser Permanente. The report also includes positive evaluations by faculty and students regarding the quality of the program.

Board Newsletter Update. At this writing, the Board’s annual newsletter is scheduled to be printed in October; this edition of *Optometry News* includes a question-and-answer article addressing some of the most frequently asked questions on the Board’s automated phone system. Additional topics covered include continuing education, legislation, public relations, examining and licensing, and enforcement.

■ LEGISLATION

SB 342 (Presley), as amended July 14, authorizes the Board to issue interim orders of suspension and other license restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 1807 (Bronshvag). Existing law provides that a person who has obtained an optometry degree from a university located outside the United States, if he/she meets other specified requirements, may take the Board’s examination for a certificate of registration as an optometrist. Until January 1, 1994, the Board may refuse to permit a person to take the examination if it finds that the curriculum of the institution granting the degree is not reasonably

equivalent to that required of applicants who have graduated from an institution within the United States; on January 1, 1994, that authority expires. As amended September 8, this bill would extend that authority until January 1, 1996 (see MAJOR PROJECTS).

Existing law provides that, until January 1, 1994, a person who graduated from a foreign optometry school prior to 1980 and who was previously sponsored or qualified to be sponsored by the Board for the National Board of Examiners of Optometry examination, shall be sponsored for the national exam. Upon passing the national exam, under existing law, the person is required to be permitted to take the examination for licensure as an optometrist. This bill would extend the repeal date until January 1, 1996.

Existing law provides that in most circumstances, a certificate issued by the Board may be renewed up to five years after the date of expiration if the applicant passes the regular examination of the Board and pays outstanding fees. This bill would reduce the period for renewal to three years after the expiration of the certificate, if the person passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the Board, and pays all outstanding fees. [A. Inactive File]

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 June 17, 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 a proprietary interest. This bill, which sponsored by the California Optometric Association and is opposed by the California Medical Association, was rejected on June 28 but was granted reconsideration. [S. B&P]

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. [A. Health]

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]

LITIGATION

On May 12, in *California Optometric Association (COA) v. Division of Allied Health Professions, Medical Board of California*, No. 531542, and *Engineers and Scientists of California (ESC), et al. v. Division of Allied Health Professions, Medical Board of California*, No. 532588, the Sacramento County Superior Court approved the parties' stipulation to consolidate the two cases; ESC was designated as the lead case. In this matter, ESC and COA challenge the validity of the medical assistant regulations adopted by the Medical Board's Division of Allied Health Professions, contending that the regulations permit unlicensed medical assistants to perform optometric tasks and functions. At this writing, a trial-setting conference is scheduled for December 6. [13:2&3 CRLR 100]

RECENT MEETINGS

At the Board's May 20-21 meeting, DCA legal counsel Robert Miller commented on Business and Professions Code section 651, which authorizes optome-

trists and other professionals to state in advertisements that they are certified in a particular area of expertise by a private or public board or agency or that they limit their practice to a particular area of expertise. Miller noted that the Board has the authority to allow an optometrist to advertise a certification only after it has approved or recognized the private or public board, agency, or other parent organization that is providing certification. Miller also noted that a recent U.S. Supreme Court ruling provides states with the right to limit such advertising if its use is misleading to the public, but prohibits states from infringing on an individual's right to engage in truthful, non-misleading advertising or to list certifications by bona fide organizations in advertising.

At the Board's August 12-13 meeting, staff announced that the occupational analysis of the practice of optometry is expected to be completed by December. [13:1 CRLR 59] Staff also noted that the Board's licensure examination was given July 15-18 at the UC Berkeley School of Optometry; the application fee was \$275, which represented a \$200 increase over prior years.

FUTURE MEETINGS

December 1-2 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 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 nonlicensees. The remaining members are pharmacists, five of

whom must be active practitioners. All are appointed for four-year terms.

MAJOR PROJECTS

Board Proposes Fee Increases, Citation and Fine System. On August 20, the Board published notice of its intent to amend sections 1749 and 1793.5, Title 16 of the CCR, which specify the schedule of fees and late penalties prescribed by California Pharmacy Law for the licenses, permits, and registrations which the Board issues. The proposed amendments would raise specified fees, including pharmacy and pharmacist biennial renewal fees; according to the Board, the fee increase is necessary to restore the Board's reserve fund and maintain it at a prudent level to enable it to conduct ongoing operations. At this writing, the Board is scheduled to conduct a public hearing on the proposed fee increases at its October 6 meeting in La Jolla.

Also on August 20, the Board published notice of its intent to add new Article 9.5, commencing with section 1775, to Title 16 of the CCR. Specifically, the proposed new article would authorize the Board's Executive Officer to issue citations containing orders of abatement and fines for violations of specified provisions of law; specify the content of a citation and the mode of service upon a licensee; set forth a schedule of fines ranging from a minimum of \$100 to a maximum of \$2,500 for violations of specified provisions of the Business and Professions Code; authorize the Executive Officer to issue citations, assess fines, and issue orders of abatement against persons who have performed services for which licensure by the Board is required, but who lack a license; and set forth procedures for contesting or appealing any citation, order of abatement, or fine. At this writing, the Board is scheduled to conduct a public hearing on the proposed citation and fine regulations on October 6 in La Jolla.

Rulemaking Update. The following is an update on rulemaking proposals discussed in detail in previous issues of the *Reporter*:

- On May 28, the Board published notice of its intent to amend section 1732.3, Title 16 of the CCR, regarding the duration of its approval of continuing education (CE) courses. Specifically, the proposed change would provide that a recognized CE provider's coursework shall be valid for three years following the initial Board approval; currently, such coursework is valid for two years following initial Board approval. This change would conform the Board's CE course validity period to that used by the American Coun-