



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. Inactive File]

AB 1445 (Speier), as amended June 1, would require DHS to develop minimum staffing ratios in accordance with prescribed criteria for the allocation of RNs and other licensed nursing staff by general acute care hospitals, acute psychiatric hospitals, special hospitals, and correctional treatment centers. 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, including temporary personnel. 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. W&M]

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 DHS 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 DHS. 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]

RECENT MEETINGS

At its June 10-11 meeting, BRN approved recommendations submitted by the Quality of Long-Term Care Demonstration Project, which is sponsored by the Medical Board and the Department of Aging's Ombudsman Program. The Project is intended to improve the handling of complaints received by regulatory agencies about the quality of care in long-term care (LTC) facilities. [13:2&3 CRLR 96; 13:1 CRLR 58] Among other things, the recommendations include the following:

-Each applicable regulatory agency will develop and annually update a packet of information that will be distributed by the Department of Aging's Ombudsman to LTC Ombudsman staff statewide; this information is expected to assist regional Ombudsman Coordinator/Managers in dealing appropriately with quality of care issues for residents in LTC facilities.

-Each applicable regulatory agency will add the Ombudsman to its mailing lists so that any changes in scope of practice, policies, procedures, or standards related to health professional practice or facility licensing can be distributed to regional Ombudsman Coordinator/Managers when these changes relate to LTC personnel and facilities.

-Each health professional licensing board involved in the Demonstration Project will provide information to its licensees, at least annually, through its newsletter or other publications about issues affecting the care of residents in LTC facilities.

At its September meeting, BRN approved a revision to its policy statement on full-time/part-time nursing faculty. In accordance with sections 1425.1(a) and 1424(g), Title 16 of the CCR, the revised policy statement provides that the majority of a nursing program's faculty must be full-time, and that "faculty" is defined to include full-time, part-time, hourly, and long-term substitutes. The nursing program must ensure that its nursing faculty's responsibilities are consistent with sections 1425.1(a) and 1424(g). Records must demonstrate that each faculty member has responsibility and accountability for instruction, evaluation of students, developing program policies and procedures, planning, and implementing and evaluating curriculum content; these records will be reviewed during interim visits and on approval visits.

FUTURE MEETINGS

February 10-11 in Los Angeles.

CERTIFIED SHORTHAND REPORTERS BOARD

Executive Officer: Richard Black
(916) 445-5101

The Certified Shorthand Reporters Board (CSRB) is authorized pursuant to Business and Professions Code section 8000 *et seq.* The Board's regulations are found in Division 24, Title 16 of the California Code of Regulations (CCR).

CSRB licenses and disciplines shorthand reporters; recognizes court reporting schools; and administers the Transcript Reimbursement Fund, which provides shorthand reporting services to low-income litigants otherwise unable to afford such services.

The Board consists of five members—three public and two from the industry—who serve four-year terms. The two industry members must have been actively engaged as shorthand reporters in California for at least five years immediately preceding their appointment. The Governor appoints one public member and the two industry members; the Senate Rules Committee and the Speaker of the Assembly each appoint one public member.

On June 1, the terms of Board members Ron Clifton and Claude Jennings expired; therefore, the two industry seats on CSRB are vacant. At its August 28 meeting, the Board selected Mary Steiner to serve as Chair and Bill Sarnoff to serve as Vice-Chair.

MAJOR PROJECTS

CSRB Developing Program Goals. At its June 19 and August 28 meetings, the Board discussed its ongoing development of specific goals for its various program areas; according to Board Chair Mary Steiner, the goals will facilitate CSRB's strategic planning for the next several years. For example, in the area of examination goals, the Board is considering a proposal to offer its licensing examination more frequently by utilizing test centers throughout the state; the Board directed staff to prepare specific proposals on offering the examination more frequently and in more locations, and to include budget assumptions related to its proposals.

CSRB is also considering a proposal to sponsor legislation imposing continuing education (CE) requirements on its licensees; according to Executive Officer Richard Black, the Board would need to devote one half-time staff position to implement a CE program. According to CSRB member Teri Jackson, the Board's Continuing



Education Committee has been considering a requirement of twenty hours of CE over each two-year period, with a minimum of one hour in each of six subject areas—English, reporting technology, academic knowledge, statutes and regulations, ethical practice, and practice or business management. However, Jackson suggested that a minimum of two hours should be required in each of those six areas; also, four hours would be required in elective areas and four hours would be available in self-study. The Committee will continue to develop proposals for the Board's future consideration.

Board Discusses Legislative Proposals. At its August 28 meeting, CSRB discussed various proposals which it may seek to include in the Department of Consumer Affairs' 1994 omnibus bill. Among other things, the Board may pursue the following changes:

—The Board may amend Business and Professions Code section 8025 to add as grounds for disciplinary action "the loss or destruction of stenographic notes, whether on paper or electronic media, which prevents the production of a transcript, due to negligence or carelessness."

—The Board is considering revising Business and Professions Code section 8031(a), which currently provides that the fee for filing an application for each examination shall be no more than \$40. The Board may seek to split this examination filing fee into two separate fees—one for filing the application for the examination and one for actually taking the examination. Executive Officer Black noted that the original idea was to split the existing \$40 fee into two separate \$20 fees; however, he suggested that the Board increase both fees to an undetermined amount.

—CSRB may seek to amend Business and Professions Code section 8031(d), to increase the fee for a duplicate certificate from \$5 to \$10.

—The Board is considering seeking legislation which would authorize it to increase the fees described in section 8031 to their statutory ceilings by Board action, instead of statutory or regulatory action.

—The Board may seek legislation which clarifies whether a court reporter who has left his/her employment, particularly court employment, is obligated to transcribe notes which he/she took during that employment; according to Black, current statutory provisions do not clearly address this question.

—Finally, the Board may seek to clarify the term "fee-generating case" as it is used in conjunction with the Transcript Reimbursement Fund which CSRB adminis-

ters. The purpose of the Fund is to provide shorthand reporting services to low-income civil litigants who are otherwise unable to afford such services; under certain circumstances, an applicant must verify that his/her case is not a fee-generating case as defined in Business and Professions Code section 8030.4(g). However, according to Rick Black, the current definition of the term "fee-generating case" contains broad exemptions which appear to include a significant variety of cases; Black contends that the broad exemptions make the provisions very difficult to administer. The Board directed Black to consult with representatives of groups such as the Western Center on Law and Poverty and the State Bar's Legal Services Office to develop recommended changes to the provisions.

■ LEGISLATION

SB 291 (Beverly), as amended August 25, was a controversial bill which—among other things—would have capped at \$120 per half-day the amount which civil litigants must pay for court reporter services. The bill was sponsored by the California Trial Lawyers Association and the California Court Reporters Association in response to a new law enacted as part of the 1993–94 Budget Act which requires civil litigants to pay the full "actual costs" of court reporter services from the first day of trial; CTLA and CCRA contended that this provision has resulted in exorbitant fees in some counties (\$510 per day in Los Angeles and \$420 per day in San Diego). Opponents of the bill argued that the fee cap would shift the true cost of court reporter services to counties and ultimately taxpayers, and that permitting more counties to use electronic reporting methods is a better way to control the costs of civil litigation than capping the fees paid by litigants for court reporter services. This bill was vetoed by the Governor on October 9.

SB 842 (Presley), as amended July 14, authorizes CSRB to issue interim orders of suspension and other license restrictions, a specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 1929 (Weggeland). Under existing law, if directed by the court or requested by a party, an official reporter of the superior court is required to produce a written transcript of specified proceedings of the court. As amended August 16, this bill specifically authorizes the court or any party or person to request a transcript in computer-readable form and specifies standards and fees for these transcripts. The bill also authorizes specified copies to

be made of these transcripts by persons possessing transcripts, and requires computer-readable transcripts produced in criminal cases, where the death penalty may be imposed, to conform to these standards. This bill was signed by the Governor on October 9 (Chapter 1016, Statutes of 1993).

AB 1392 (Speier), as amended July 1, would—among other things—provide that CSRB's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the Director of the Department of Consumer Affairs. [S. B&P]

AB 1807 (Bronshvag), as amended September 8, would change the name of the Board to the Court Reporters Board of California.

Existing law allows CSRB to grant provisional recognition to a school which has met specified requirements; under existing law, CSRB is required to recognize a school after it has been in continuous operation for at least three years from the issuance of the provisional recognition, upon the fulfillment of certain requirements. This bill would allow CSRB to recognize a provisionally recognized school in operation from three to five years after the issuance of the provisional license, upon the school's fulfillment of those requirements. [A. Inactive File]

AB 585 (Knight), as amended May 5, would abolish CSRB, repeal provisions pertaining to CSRB, and enact new provisions providing for the regulation of shorthand reporters by the Shorthand Reporters Program in DCA, to be administered by the DCA Director and a program administrator appointed by the Governor. [A. W&M]

AB 721 (Horcher). Under existing law, an official reporter of the superior court is required to take down in shorthand all testimony and proceedings at the request of either party or the court, in a civil action, and on the order of the court, the district attorney, or the attorney for the defendant in a criminal proceeding. As amended June 9, this CCRA-sponsored bill would provide that in all proceedings in which a felony offense is alleged in a justice, municipal, or superior court, a stenographic court reporter who uses computer-aided transcription equipment shall be present, and all pretrial motions and trial proceedings in civil cases in superior court shall be conducted with a stenographic court reporter present who uses computer-aided transcription equipment. The bill would also provide that a nonstenographic method of recording may be utilized in all other civil proceed-



ings in superior courts upon approval of the bench officer presiding over the proceedings; that no court reporter employed on the effective date of the bill shall have his/her hours of employment as a court reporter reduced as the result of the use of nonstenographic methods; and that, except as provided above, no stenographic court reporter employed on the effective date of the bill shall be prevented from reporting any civil or criminal proceedings as a result of not using computer-aided transcription equipment.

Existing law provides that when an official court reporter or a temporary court reporter is unavailable to report an action or proceeding in a municipal or justice court, the court may order the action or proceeding be electronically recorded, as specified, and requires the court to assign available reporters first to report preliminary hearings and then to other proceedings. This bill would revise this provision to make it apply only to misdemeanor or civil proceedings in municipal or justice courts, and to delete the latter provision above regarding preliminary hearings. The bill would require a good faith effort to be made to secure a court reporter, and would provide that when a transcript is required, any transcript prepared from such an electronic recording shall be a stenographic transcript.

This bill would also change the penalty fee for failure to notify CSRB of a change of address, from no greater than \$20, to no greater than \$100. [S. Jud]

■ LITIGATION

In *Antoine v. Byers & Anderson, et al.*, No. 91-7604 (June 7, 1993), the U.S. Supreme Court considered whether a court reporter is absolutely immune from damages liability for failing to produce a transcript of a federal criminal trial. The Court explained that in March 1986, after a two-day trial, a jury convicted petitioner Antoine of bank robbery. Petitioner promptly appealed and ordered a copy of the transcript from respondent Ruggenberg, who had served as the court reporter; the U.S. District Court ordered Ruggenberg to produce a transcript by May 29, 1986. Over two years later, Ruggenberg had yet to provide a transcript, despite a long series of hearings, court orders, and new filing deadlines. In July 1988, Ruggenberg finally explained that she had lost many of her trial notes, though additional notes and tapes were later to come to light. At one point in the proceedings, Ruggenberg was fined and arrested as the Ninth Circuit Court of Appeals sought to obtain this and other overdue transcripts. Eventually, making use of Ruggenberg's partial notes

and materials submitted by the parties pursuant to Rule 10(c) of the Federal Rules of Appellate Procedure, another reporter produced a partial transcript and the appellate process went forward. As a result of the delay in obtaining a transcript, petitioner's appeal was not heard until four years after his conviction. In 1990, the Court of Appeals set aside petitioner's conviction and remanded the case to the District Court to determine whether petitioner's appeal had been prejudiced by the lack of a verbatim transcript, and whether the delay in receiving the transcript violated petitioner's constitutional right to due process. The District Court ruled against petitioner on both issues and reinstated his conviction. The Court of Appeals then affirmed.

In the meantime, before the Court of Appeals disposed of his first appeal in 1990, petitioner filed this civil action, seeking damages from Ruggenberg and respondent Byers & Anderson, Inc., the firm that had engaged her pursuant to its contract to provide reporting services to the District Court. Following discovery, the District Court granted summary judgment in favor of respondents on the ground that they were entitled to absolute immunity. Without reaching questions of liability or damages, the Court of Appeals affirmed. Reasoning that judicial immunity is "justified and defined by the functions it protects and serves," and that "the tasks performed by a court reporter in furtherance of her statutory duties are functionally part and parcel of the judicial process," the Court of Appeals held that actions within the scope of a reporter's authority are absolutely immune. Because some circuits have held that court reporters are protected only by qualified immunity, the Supreme Court granted certiorari to resolve the conflict.

The Court initially noted that the proponent of a claim to absolute immunity bears the burden of establishing the justification for such immunity. In determining which officials perform functions that might justify a full exemption from liability, the Court reviewed the immunity historically accorded judicial officials at common law and the interests behind it. The Court noted that the skilled, professional court reporter of today was unknown during the centuries when the common-law doctrine of judicial immunity developed; it was not until the late 19th century that official court reporters began to appear in state courts. Prior to the enactment of the Court Reporter Act in 1944, the federal system did not provide for official court reporting. Court reporters were not among the class of person protected by judicial immunity in the 19th century. Fur-

ther, the Court rejected respondents' contention that they should be treated as their historical counterparts (common-law judges who made handwritten notes during trials), stating that the function performed by judicial notetakers at common law is significantly different from that performed by court reporters today, since "court reporters are charged by statute with producing a 'verbatim' transcript of each session of the court for inclusion in the official record, and common-law judges exercise discretion and judgment in deciding exactly what and how much they will write."

Further, the Court also noted that even had common-law judges performed the functions of a court reporter, that would not end the immunity inquiry; it would still remain to consider whether judges, when performing that function, were themselves entitled to absolute immunity. The Court explained that judicial notetaking as it is commonly practiced is protected by absolute immunity, because it involves the kind of discretionary decision-making that the doctrine of judicial immunity is designed to protect; however, the Court noted that when considering "a hypothetical case in which a common-law judge felt himself bound to transcribe an entire proceeding verbatim, it is far less clear—and neither respondent refers us to any case law suggesting—that this administrative duty would be similarly protected."

The Court also rejected respondents' contention that its "functional approach" to immunity requires that absolute immunity be extended to court reporters because they are "part of the judicial function." The Court found that "[t]he doctrine of judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability. Accordingly, the 'touchstone' for the doctrine's applicability has been 'performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.'" According to the Court, "[w]hen judicial immunity is extended to officials other than judges, it is because their judgments are 'functionally comparable' to those of judges—that is, because they, too, 'exercise a discretionary judgment' as a part of their function." Again, the Court noted that the function performed by court reporters is not in this category, since they are required by statute to "record verbatim" court proceedings in their entirety and "are afforded no discretion in the carrying out of this duty.... In short, court reporters do not exercise the kind of judg-



ment that is protected by the doctrine of judicial immunity.”

Finally, the Court addressed respondents' argument that strong policy reasons support the extension of absolute immunity to court reporters; according to respondents, given the current volume of litigation in the federal courts, some reporters inevitably will be unable to meet dead-lines, and absolute immunity would help to protect the entire judicial process from vexatious lawsuits brought by disappointed litigants when this happens. In rejecting this argument, the Court stated that cases of this kind are relatively rare, and respondents provided no empirical evidence demonstrating the existence of any significant volume of vexatious and burdensome actions against reporters, even in the circuits in which reporters are not absolutely immune. The Court also opined that if a large number of cases does materialize, and if it misjudged the significance of this burden, then a full review of the countervailing policy considerations by the Congress may result in appropriate amendment to the Court Reporter Act. Finally, the Court noted that there is no reason to believe that the federal judiciary, which is familiar with the special virtues and concerns of the court reporting profession, will be unable to administer justice to its members fairly.

RECENT MEETINGS

At CSRB's June 19 meeting, Executive Officer Rick Black requested permission to attend the meetings of CCRA on a regular basis in order to keep informed of its activities and to maintain communications with the trade association; he also requested permission to attend the National Court Reporters Association's (NCRA) annual convention in San Francisco and the annual conference of the Council on Licensure, Enforcement, and Regulation (CLEAR) in San Diego. Following discussion, the Board granted Black permission to attend the annual meetings of CCRA, NCRA, and CLEAR, and to attend the regular and council meetings of CCRA whenever it does not interfere with other business.

Also at its June 19 meeting, the Board directed staff to commence the rulemaking process to revise regulatory section 2480, which provides that CSRB's Executive Officer, upon completion of an investigation, is authorized to issue citations containing orders of abatement and fines for violations by a licensed CSR of the provisions of law and/or regulations referred to in section 2480, and sets forth a range of fines for specified violations. The Board agreed to propose amendments to section 2480(c) to provide that the untimely filing of transcripts and the failure

to file transcripts shall be subject to a fine no less than \$100 and no more than \$2,500. At this writing, the Board has not yet published notice of this proposed regulatory change in the *California Regulatory Notice Register*.

At its August 28 meeting, the Board discussed the criteria it uses to determine whether it should grant reciprocity to licensees of other states; generally, the Board requires that the exam administered by each state be "substantially the same" as the California exam in order to grant reciprocity. Rick Black explained that staff considers the following three criteria to determine whether an exam is substantially the same as California's exam: whether the examination had a written knowledge test; the speed of the machine portion of the test; and the percentage of accuracy required to pass the examination. Based on these criteria, the Board discussed whether it should recognize the Idaho exam as substantially the same as the California exam; the Board directed staff to contact Idaho officials to determine exactly what the current requirements are and to present its findings at CSRB's November meeting.

FUTURE MEETINGS

To be announced.

STRUCTURAL PEST CONTROL BOARD

Registrar: Mary Lynn Ferreira (916) 263-2540

The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licensees are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Wood Roof Cleaning and Treatment, the application of wood preservatives to roofs by roof restorers. Effective July 1, 1993, all Branch 4 licensees must be licensed contractors. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application, and label directions if they apply pesticides. Such certificates are not transferable from one company to another.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

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MAJOR PROJECTS

Board Proposes New Rulemaking Package. On September 3, SPCB published notice of its intent to amend sections 1973 and 1993, adopt sections 1974 and 1996(h), and repeal section 1994, Title 16 of the CCR. Specially, the package includes the following proposals:

- Business and Professions Code section 8505.7 provides that the space to be fumigated shall be vacated by all occupants prior to the commencement of fumigation and all entrances shall be blocked or otherwise secured against re-entry, until declared by a SPCB licensee to be safe for reoccupancy. Existing section 1973 specifies that following a fumigation a licensee must post a Notice of Re-Entry form and the form must be printed in red lettering on a white background. This proposal would amend section 1973 by specifying that the form must be printed in black lettering on a white background.

- Business and Professions Code section 8505.10 specifies the information that must be in a warning sign. Existing regulations do not specify the size of the warning sign; proposed new section 1974 would specify that warning signs shall be at least 11" x 17" in size. Section 1974 would also incorporate a sample warning sign as new Form 43M-15.