



Gorges has concluded that no license is required so long as the aide is not engaged in the sale of hearing aids.

In any event, the Committee recognized that, under the statute, a person not qualified to make earmolds in the for-profit setting may be able to perform the same task in a nonprofit setting. If the focus is on consumer protection, there should be no difference in standards based upon the work setting. SPAEC plans to refer this issue to its joint subcommittee with HADEC (once it is created), because the conflict is beyond SPAEC's independent jurisdiction.

LEGISLATION:

SB 664 (Calderon) would prohibit speech-language pathologists and audiologists, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This two-year bill is pending in the Senate Business and Professions Committee.

Future Legislation. The Department of Consumer Affairs has agreed to include several legislative amendments for SPAEC in its 1992 omnibus bill. The first will change the Committee's licensure expiration and renewal process from a biennial system to a cyclical renewal system. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 97 for background information.) The second change will amend Business and Professions Code section 2534.2(2) to raise the minimum delinquency fee for late payment of fees from \$10 to \$25, and section 2534.2(5) to increase the fee for the issuance of a duplicate certificate from \$10 to \$40. Finally, an amendment to section 2530 will correct an oversight in the 1990 legislation which changed the name of SPAEC to the "Speech-Language Pathology and Audiology Committee" and added "-language" to the term "speech" throughout the Act, but failed to change the name of the Act itself.

RECENT MEETINGS:

At the Committee's November 8 meeting, the subcommittee which is developing SPAEC's Fine/Citation/Enforcement Manual reported that the project is still in progress. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 101; Vol. 11, No. 1 (Winter 1991) p. 79; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 111 for background information.) The subcommittee's efforts have revealed

the difficulty of drafting an adequate description of the profession's permissible range of involvement without either duplicating existing guidelines or writing a voluminous "novel." At this writing, the subcommittee is awaiting additional input, and tentatively considering a joint committee with CSHA.

Also at its November meeting, the Committee briefly discussed the legality of hearing screenings via telephone. A licensed audiologist has inquired as to the feasibility of setting up a 900 number to offer hearing screenings over the phone in California. Apparently, a number of organizations in other states offer hearing screenings via 800 lines. DCA counsel Greg Gorges prepared a memo identifying section 1399.180(c), Title 16 of the CCR, as the applicable regulation. The section provides that diagnosis or treatment of individuals for speech or hearing disorders by mail or telephone without prior examination by a licensee is unprofessional conduct. The Committee, however, postponed action until its January meeting since Gorges was not present at the November meeting.

Also at the November meeting, SPAEC implored DCA Director Jim Conran to encourage Governor Wilson to fill the vacancies on HADEC, so that SPAEC may initiate a joint subcommittee with HADEC to resolve issues of mutual interest. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 94 and 101 for background information.)

FUTURE MEETINGS:

April 2 in San Francisco.
July 10 in Irvine.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel (916) 920-6481

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Division 31, Title 16 of the Cali-

fornia Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

Governor Wilson recently appointed Nancy Campbell to the Board as a public member. Campbell is currently chair of BENHA's Administrative Committee, and also serves on the Board's Disciplinary Committee.

MAJOR PROJECTS:

Nursing Home Reform Act Update.

As a result of the recent settlement between the federal Health Care Financing Administration (HCFA) and California's Department of Health Services (DHS) regarding California's implementation of the federal Nursing Home Reform Act passed by Congress in 1987, HCFA is responsible for circulating guidelines implementing the federal reforms and compiling and circulating changes submitted by California and other states. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 101-02; Vol. 11, No. 3 (Summer 1991) p. 98; and Vol. 11, No. 2 (Spring 1991) pp. 94-95 for background information.) At BENHA's December 4 meeting, BENHA Executive Officer Ray Nikkel informed the Board that HCFA has yet to release the proposed guidelines; Mr. Nikkel anticipated the release to be forthcoming and the public comment period to begin forthwith.

Examination and Enforcement Statistics. The pass rate for the October 10 state exam for nursing home administrators (NHA) was 54%; the national exam pass rate was 60%.

From August 1 to November 30, BENHA received three citations from the Department of Health Services (DHS) for "AA" violations, which are violations of standards which lead to a patient's death, and 62 "A" violations,



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which seriously endanger a patient's safety with a substantial probability of death or serious bodily harm. BENHA conducted ten informal telephone counselling sessions and issued one letter of warning, and requested one accusation against an NHA.

In December, BENHA issued its notice of nursing home administrators whose licenses are suspended or revoked or who were placed on probation current through December 3; BENHA is required to publish this information pursuant to AB 1834 (Connelly) (Chapter 816, Statutes of 1987). (See CRLR Vol. 9, No. 3 (Summer 1989) p. 64; Vol. 9, No. 1 (Winter 1989) p. 58; and Vol. 8, No. 3 (Summer 1988) p. 71 for extensive background information.) Currently, thirteen NHAs are on probation, six of whom are presently working as the designated administrators of nursing homes in California.

LEGISLATION:

AB 1191 (Epple). As amended June 11, this bill would, with specific exceptions, require that a physician, prior to the administration of a physical restraint to a resident of a skilled nursing facility or intermediate care facility, seek consent from the resident (if he/she has the capacity to understand and make health care decisions) or the legal representative of the resident. For a resident who is unable to make health care decisions, as determined by the resident's physician, this bill would require a facility to conduct a physical restraint review process. AB 1191 is a two-year bill pending in the Assembly Ways and Means Committee.

AB 95 (Friedman), as amended May 15, would prohibit (except in an emergency) a long-term health care facility from using a physical restraint on a resident unless the facility has verified that the resident has given his/her informed consent, as specified, to the use of the physical restraint, and the informed consent has been documented by the physician in the resident's medical record. Additionally, this bill would require that skilled nursing and intermediate care facilities' written policies regarding patients' rights ensure that each patient admitted to the facility has the right to be free from any physical restraint which is not required for medical purposes, but is imposed for purposes of discipline or convenience, and is notified of this right. AB 95 is a two-year bill pending in the Assembly Ways and Means Committee.

SB 664 (Calderon) would prohibit nursing home administrators, among others, from charging, billing, or other-

wise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This two-year bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

A quorum was not present at BENHA's October 22 meeting, as only two of BENHA's nine members were in attendance; all business was postponed until BENHA's December 4 meeting in San Diego.

At BENHA's December 4 meeting, Hoyt Crider and Donovan Perkins of the American College of Health Care Administrators (ACHCA) presented the Board with ACHCA's views regarding a new state law concerning the licensure and/or certification of administrators of residential care facilities for the elderly (RCFE). AB 1615 (Hannigan) (Chapter 848, Statutes of 1991) requires the Department of Social Services (DSS), not BENHA, to handle the licensure and/or certification of RCFE administrators. The decision to delegate RCFE administrator licensing to DSS was made after a lengthy study which concluded that DSS is the appropriate agency to handle the task and that BENHA has no strong desire to assume it. The study was conducted by DSS. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 94 for background information.) ACHCA opposes this arrangement for a variety of reasons, including its contentions that DSS apparently intends to certify RCFE administrators as subprofessionals; DSS will license or certify RCFE administrators in much the same way as the Department of Health Services (DHS) currently certifies nursing assistants; many RCFE administrators who operate campus-like facilities with multiple levels of care are presently licensed by BENHA; AB 1615 is inconsistent with the findings from public hearings conducted by Senator Henry Mello in 1986; the provisions of AB 1615 do not adequately address the problems summarized by the Little Hoover Commission in December 1990; and the current repository of twenty years of licensure and certification experience is BENHA.

Crider and Perkins called upon the Board to support the introduction of a bill to authorize BENHA to license RCFE administrators. The measure would reorganize and realign the Board to include two RCFE administrators as members, and establish a special Board committee to begin drafting eligibility

requirements and preparing exam structure necessary for RCFE administrators.

Department of Consumer Affairs legal counsel Don Chang opined that since AB 1615 was just recently enacted and DSS has not had an opportunity to implement the law, efforts to repeal or significantly amend the law would most likely be futile. The Board unanimously voted to extend an invitation to DSS representatives to attend BENHA's next meeting and discuss the possible ramifications of AB 1615 and its impacts on both DSS and BENHA.

FUTURE MEETINGS:

April 7 in Los Angeles.

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 are licensed optometrists and three are public members. One optometrist position is currently vacant due to the June 1991 resignation of Ronald Kosh.

MAJOR PROJECTS:

Board Questions DAHP's Medical Assistant Regulations. At the Board's November 18 meeting, Tony Arjil of the Medical Board of California's (MBC) Division of Allied Health Professions (DAHP) addressed the Board's concerns about DAHP's proposed medical assistant (MA) regulations, some of which relate to the practice of optometry. For three years, DAHP has been attempting to adopt sections 1366-1366.5, Title 16 of the CCR, to define the technical supportive services that MAs may perform. (See *supra* agency report on MBC; see also CRLR Vol. 11, No. 4 (Fall 1991) pp. 87-88; Vol. 11, No. 3 (Summer 1991) p. 87; and Vol. 10, No. 4 (Fall 1990) p. 82 for extensive background information on DAHP's proposed regulations.)