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 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.

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.)

During a lengthy discussion, members of the Board questioned Arjil extensively about the meaning of specific provisions of the regulations. For example, the Board questioned the meaning of the phrase permitting MAs to perform "other simple or automated optometric testing," and whether medical assistants would be allowed to interpret optometric test results. Arjil repeatedly expressed uncertainty about the optometric functions the proposed regulations are intended to encompass and noted that they are open to interpretation. Expressing concern about the ambiguous language, the potential for the unlicensed practice of optometry, and possible consumer harm, the Board appointed members Gene Calkins and Pamela Miller to represent the Board at DAHP's November 22 meeting in San Diego.

At the DAHP meeting, Calkins and Miller expressed two concerns. First, they contended that the phrase "other simple testing" as used in DAHP's proposed regulations is vague and meaningless, and suggested deletion of this phrase or substitution of the phrase "other simple testing, not requiring judgment or interpretation in order to obtain test results."

Second, the Board requested that DAHP narrowly define the term "tonometry" to "identified tonometry" (*i.e.*, non-contact tonometry), where there is no risk of significant patient injury due to anesthesia or error in reading which could take place in Schiotz or Goldmann Tonometry.

In response to the Board's concerns, DAHP amended the regulations to read that a medical assistant may "perform automated visual field testing, tonometry, or other simple testing not requiring judgment or interpretation in order to obtain test results"; DAHP declined to limit the definition of tonometry. The MA regulations, previously disapproved by Department of Consumer Affairs (DCA) Director Jim Conran and former DCA Director Michael Kelley, are awaiting Conran's review and approval at this writing.

Board Proposes to Abolish Exam Appeals Process. At its November meeting, the Board agreed to seek regulatory amendments to section 1533 and the repeal of section 1533.1, Division 15, Title 16 of the CCR, which would effectively abolish examination appeals. According to a staff report, review of an appeal takes approximately fourteen hours per candidate and most decisions are not overturned. Currently, licensure candidates may appeal their exam score if they fail to receive a passing grade, cite the specific items in question, and adhere to specified time limits. The Board was scheduled to hold a public hearing on the proposed regulatory revisions on February 20.

Regulatory Changes. The Board's Legislation and Regulations Committee was scheduled to meet on January 10 in Sacramento to continue its comprehensive review of the Board's regulations; the meeting was not open to the public. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 103; Vol. 11, No. 3 (Summer 1991) p. 99; and Vol. 11, No. 2 (Spring 1991) p. 96 for background information.)

LEGISLATION:

SB 664 (Calderon) would prohibit optometrists, 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.

AB 1479 (Burton). The Robert W. Crown California Children's Services Act requires the Department of Health Services (DHS) to establish and administer a program of services for physically defective or handicapped persons under the age of 21 years; the Act requires the DHS Director to establish those conditions coming within the definition of "handicapped child." As amended May 29, this bill would require any condition established by the Director which is treatable by an ophthalmologist to be deemed treatable by an optometrist if the condition is within the scope of practice of optometry. This two-year bill is pending in the Senate Health and Human Services Committee.

AB 1124 (Frizzelle) would, among other things, establish the right, duty, responsibility, and obligation of a person engaged in the practice of optometry to exercise professional judgment in the performance of his/her duties, including but not limited to scheduling, diagnosis, treatment within the scope of practice of optometry, and referral of patients. This two-year bill is pending in the Assembly Health Committee.

AB 1358 (Floyd) would specify that a registered optometrist who performs any act constituting the practice of optometry while employed by another optometrist, a physician, or any entity authorized by the laws of this state to employ an optometrist to perform acts constituting the practice of optometry is bound by and subject to the optometry statutes and regulations. This bill would also specify that the Board may suspend or revoke the certificate of registration of, or otherwise discipline, an optometrist who is employed as described above for any of the causes specified in the optometry statutes or regulations. This two-year bill is pending in the Assembly Health Committee.

SB 613 (Calderon). Existing law requires a registered optometrist who temporarily practices optometry outside or away from his/her regular place of practice to deliver to each patient there fitted or supplied with glasses a specified receipt. As amended July 10, this bill would instead require a registered optometrist to furnish to each patient there fitted or supplied with prescription spectacle lenses a specified receipt. This two-year bill is pending in the Assembly Health Committee.

Future Legislation. At its November meeting, the Board unanimously agreed to pursue legislation to increase the current ceiling on its license application and renewal fees. According to staff, the current statutory fee ceilings are not adequate to cover the Board's licensing and enforcement costs. Business and Professions Code section 3152 limits the Board's application fee to $75. If an applicant is found ineligible to take the exam, the applicant is entitled to a refund of no more than $50. Section 3152 also limits the current renewal fee to $85. The Board agreed to seek amendments to section 3152 to raise the application fee ceiling to $375; the refund ceiling to $250; and the renewal fee ceiling to $150. At this writing, the Board is seeking an author for this bill.

RECENT MEETINGS:

DCA Director Jim Conran addressed the Board at its November meeting, reminding Board members that a regulatory agency exists to protect the public, not to act as a modern guild which protects the profession regulated. He suggested that each member of the Board reflect on why he/she was appointed and the purpose of that appointment. Conran warned the Board not to engage in any actions to control the marketplace or limit the supply of optometric services; consumers are best served when the marketplace is open and competitive. He also commented that DCA disapproves of the Board's acceptance of continuing education (CE) units which are unrelated to the medical aspect of optometry (*e.g.*, those involving accounting and office management). Conran said he would rather see a three-unit CE requirement that actually

enhances the practice of optometry than 60 units covering management. Conran also called the Board's treatment of foreign-trained graduates a disgrace, alluding to the Board's past refusal to accept foreign optometric training, and its foot-dragging in creating a remedial training course for foreign graduates after being directed to do so by the legislature. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 113; Vol. 9, No. 4 (Fall 1989) p. 73; and Vol. 9, No. 3 (Summer 1989) pp. 64–65 for extensive background information.)

Conran concluded his remarks by offering his assistance and encouraging the Board to make constructive changes before DCA or the legislature imposes changes on the Board without regard to its input. "You'd better get with it quickly," observed Conran. Board members had no questions for Conran.

At its November meeting, the Board elected the following officers for 1992: Thomas R. Nagy, president; Pamela J. Miller, vice president; and Julia Preisig, secretary. Nagy and Miller are optometrists and Preisig is a public member of the Board. Also, Bob Miller has been reassigned to the Board to replace Steve Martini as the Board's DCA legal advisor.

FUTURE MEETINGS:

May 29–30 (location undecided).

BOARD OF PHARMACY

Executive Officer: Patricia Harris
(916) 445-5014

Pursuant to Business and Professions Code section 4000 *et seq.*, the Board of Pharmacy grants licenses and permits to pharmacists, pharmacies, drug manufacturers, wholesalers and sellers of hypodermic needles. It regulates all sales of dangerous drugs, controlled substances and poisons. The Board is authorized to adopt regulations, which are codified in Division 17, Title 16 of the California Code of Regulations (CCR). To enforce its regulations, the Board employs full-time inspectors who investigate accusations and complaints received by the Board. Investigations may be conducted openly or covertly as the situation demands.

The Board conducts fact-finding and disciplinary hearings and is authorized by law to suspend or revoke licenses or permits for a variety of reasons, including professional misconduct and any acts substantially related to the practice of pharmacy.

The Board consists of ten members, three of whom are public. The remaining members are pharmacists, five of whom must be active practitioners. All are appointed for four-year terms.

MAJOR PROJECTS:

Pharmacy Technician Regulations. AB 1244 (Polanco) (Chapter 841, Statutes of 1991), which was signed into law on October 11, permits a pharmacy technician, as defined, to perform packaging, manipulative, repetitive, or other nondiscretionary tasks while assisting, and while under the direct supervision of, a registered pharmacist. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 105–06 for background information.) The Board of Pharmacy is authorized to adopt regulations defining the functions which may be performed by a pharmacy technician. In December, the Board published notice of its intent to amend section 1717(c) and adopt new sections 1793–1793.7, Division 17, Title 16 of the CCR, to define the qualifications and permissible duties of pharmacy technicians.

Existing section 1717(c) lists certain duties which must be performed by a pharmacist and those duties which may be performed by non-licensed personnel, such as typing prescription labels and requesting and receiving refill authorization subject to prior review by a pharmacist. The Board proposes to incorporate portions of this section into new sections 1793.1 and 1793.3. Specifically, proposed section 1793.1 would list functions which only a pharmacist may perform and which may not be delegated to a pharmacy technician; section 1793.2 would identify the tasks which a pharmacy technician may perform under the direct supervision and control of a licensed pharmacist, including removing drugs from stock, counting, pouring, or mixing pharmaceuticals, placing the products into a container, affixing labels to containers, packaging and repackaging; and proposed section 1793.3 would describe and update tasks which may be performed by non-licensed personnel who are not pharmacy technicians, to include the entry of prescriptions into a computer record system.

Proposed section 1793.4 would establish registration requirements for pharmacy technicians, and authorize the Board to issue a certificate to an applicant who has met any of the following requirements: has obtained at least an associate of arts degree in a field of study directly related to the duties performed by a pharmacy technician; has completed a training course specified by the Board; is eligible to take the Board's pharmacist licensure exam; or has one year's experience (a minimum of 1,500 hours) performing the tasks of a pharmacy technician while assisting a pharmacist in the preparation of prescriptions in specified facilities. Section 1793.5 would specify the training courses which are acceptable to the Board in satisfaction of the requirement in section 1793.4. Section 1793.6 would establish requirements for pharmacies employing technicians; in particular, it clarifies that nonpharmacist personnel must work under the direct supervision of a registered pharmacist, the supervising pharmacist must be on the premises at all times, and the pharmacist must indicate that all prescriptions prepared by a technician have been checked by initialing the prescription label before the medication is given to the patient. The subsection also requires a technician to wear identification clearly identifying him/her as a technician.

The Board held an informational public hearing on the proposed pharmacy technician regulations on November 12; it was scheduled to hold a formal regulatory hearing on these regulations on January 21.

Locked Storage and Emergency Delivery Requirements for Medical Device Retailers. Since July 1991, the Board of Pharmacy has licensed medical device retailers (MDRs) as a separate class. MDRs are non-pharmacy firms that may dispense, upon prescription, "dangerous devices" such as hypodermic syringes and other items that are marked by the manufacturer as available upon prescription only. Each retail site of an MDR must have a Board-licensed individual designated as "in charge." This individual may be a pharmacist or an "exemptee," a separately-licensed individual authorized to dispense dangerous devices. The Board recently proposed the adoption of new sections 1748.1 and 1748.2, Title 16 of the CCR, regarding the proper storage of dangerous devices at MDR retail sites and the delivery of devices to patients after hours or in emergency situations.

Proposed section 1748.1 would provide that an MDR may use locked storage (a lock box or locked area) for the emergency dispensing of dangerous devices. Locked storage may be installed or placed in a service vehicle of the MDR for purposes of delivery, set-up, or after-hours emergency service of dangerous devices to patients having prescriptions on file for the dangerous device. No hypodermic needles or syringes may be stored in this locked storage. Section 1748.1 would also provide that dangerous devices shall be furnished from the locked storage only upon the oral or written authorization of an