



process, and renewal fees support PELS' enforcement/ongoing programs.

RECENT MEETINGS:

At PELS' October 4 meeting, DCA Director Jim Conran addressed the Board. Conran reminded the Board that its primary goal is consumer protection and noted that DCA is available to assist the Board in meeting this goal.

At its November 8 meeting, the Board engaged in a lengthy discussion regarding the powers of the Board chair and committees, and various rights of Board members. Following the discussion, the Board agreed that the rights of each Board member are to be recognized as contributing to the Board effort as a whole; no Board member, without the approval of the Board, may represent himself/herself as a spokesperson for the Board on any matter which has not been acted on by the Board; no Board member shall be denied his/her right to agenda an item on a Board or Committee agenda; and no Board member shall be denied his/her right to have counsel present from any recognized state agency if he/she so desires.

FUTURE MEETINGS:

To be announced.

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 requirements 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 60 people.

MAJOR PROJECTS:

Budget Update. At its November meeting, the Board discussed the effect

of AB 222 (Vasconcellos), the 1991-92 budget bill which will, among other things, transfer excess reserve funds from special fund agencies, including BRN, to the state's general fund. BRN estimates that the state will transfer \$840,000 from the Board's special fund into the general fund to help offset the state's \$14.3 billion budget deficit. This money, which is not expected to be returned, will significantly decrease BRN's fund to three months' worth of operating expenses. In the past, any unexpended funds from one year were transferred into the special fund to be used by BRN for operating expenses or emergencies in future years. The loss of \$840,000 thus has an effect not only on this fiscal year, but on future years' operations as well.

Also at the November meeting, BRN Executive Officer Catherine Puri reported on the status of the Board's budget change proposal (BCP) for fiscal year 1992-93, which would add 27 permanent positions to the Board's staff. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 110 for background information.) According to the Board, its present staff can answer only 30% of incoming calls, has a one-week backlog of over 5,000 pieces of mail in the mailroom, has 57,000 license files waiting to be microfilmed, and takes two to three months to process licensure applications. The BCP was approved by the Department of Consumer Affairs (DCA) and the State and Consumer Services Agency, and is expected to be included in the Governor's proposed budget for the 1992-93 fiscal year.

Computer Adaptive Testing. Following its 1991 Delegate Assembly vote to implement computer adaptive testing (CAT) for the national standardized licensing examinations for registered nursing (NCLEX-RN), the National Council of State Boards of Nursing (NCSBN) recognized that various aspects of the implementation of computer testing must be managed by committees and other appropriate groups. As a result, NCSBN—the national organization which provides the NCLEX-RN—established a Computerized Testing Steering Committee, CAT Education/Information Team, CAT RN Field Test Team, CAT Implementation Team, Proposal Evaluation Team, Negotiating Team, and CAT Technical Psychometric Review Panels. Julie Campbell-Warnock, a member of the CAT Education/Information Team, attended BRN's November meeting and reported that her team's charge is to develop, coordinate, and prioritize dissemination of all educational and infor-

mational materials related to the implementation of CAT. At its first meeting, the team developed priorities, set timelines, and developed a budget for its activities.

Board Discusses Perfusionist Licensing Bill. In 1991, former BRN member and now Assemblymember Tricia Hunter introduced AB 566, which would provide for the licensure and regulation of perfusionists; early versions of the bill delegated the authority to regulate perfusionists to the Medical Board's Division of Allied Health Professions. However, Assemblymember Hunter is now exploring the possibility of amending AB 566 to place perfusionist licensing under the jurisdiction of BRN. According to BRN, there are approximately 300 perfusionists in California, and they provide a highly technical type of care both inside the operating room and in other areas. Perfusionists typically deal with patients requiring open heart surgery, extracorporeal support or stand-by for angioplasty of the coronary arteries, extracorporeal membrane oxygenator support, autotransfusion services during a variety of cardiac and non-cardiac surgical procedures, intra-aortic balloon support, limb perfusion for cancer treatments, protection of donor hearts for heart transplantation, and a variety of other supportive procedures.

The Board noted that precedent exists for a board to regulate an entity other than its original licensees; the perfusionists' funding and fees would be deposited in a separate account from BRN; the Board could create a five-member advisory committee that would address all questions of perfusionist practice, evaluate the credentials of those applying for certification, and make recommendations to BRN on perfusionist issues or candidates; there is a national examination sanctioned by the American Board of Cardiovascular Perfusion and accredited by the Council on Allied Health Education of the American Medical Association, which would have to be evaluated by the Department of Consumer Affairs' Central Testing Unit and BRN to ascertain whether the exam meets California testing requirements; for the credentialing of perfusionists, there is a national certification process in place, and those standards could form a basis for credentialing in California; and there are also national standards for schools that educate perfusionists, and those standards could be used to develop education regulations.

At the conclusion of the discussion, BRN decided to take no definite action on the proposal until the Board knows



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more about AB 566 and perfusionists in general. An amended version of the bill was expected to be presented to the Board at its January meeting.

Regulatory Update. At this writing, BRN is still reviewing the public comments received on its proposed amendments to section 1443.5(4), Title 16 of the CCR, which would authorize RNs to assign nursing tasks according to a specific protocol to subordinates, including unlicensed personnel. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 109; Vol. 11, No. 3 (Summer 1991) p. 106; and Vol. 11, No. 1 (Winter 1991) p. 87 for background information.) The proposed amendments await review and approval by DCA and the Office of Administrative Law (OAL).

BRN is also seeking amendments to section 1417, Title 16 of the CCR, to reflect the revised fee schedule mandated by AB 485 (Hunter) (Chapter 352, Statutes of 1991). (See CRLR Vol. 11, No. 4 (Fall 1991) p. 110 for background information.) At this writing, the proposed amendments are awaiting OAL's approval.

LEGISLATION:

SB 664 (Calderon) would prohibit RNs, 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 819 (Speier). Existing law provides that it is not unlawful for prescribed health professionals to refer a person to a laboratory, pharmacy, clinic, or health care facility solely because the licensee has a proprietary interest or co-ownership in the facility. This bill would instead provide that, subject to specified exceptions, it is unlawful for these licensed health professionals to refer a person to any laboratory, pharmacy, clinic, or health care facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest; the bill would also provide that disclosure of the ownership or proprietary interest would not exempt the licensee from the prohibition. This two-year bill is pending in the Assembly Health Committee.

SB 1190 (Killea), as amended July 17, would enact the Licensed Midwifery Practice Act of 1991, establishing a seven-member Licensed Midwifery Examining Committee within the Medical Board's Division of Allied

Health Professions. This two-year bill is pending in the Senate Appropriations Committee.

AB 14 (Margolin), as amended June 19, would enact the Health Insurance Act of 1991 for the purpose of ensuring basic health care coverage for all persons in California. This two-year bill is pending in the Senate Rules Committee.

AB 95 (Friedman), as amended May 15, would prohibit, except in emergency situations, a long-term health care facility from using a physical restraint on a resident unless the facility has obtained the informed consent of the patient, as specified. This two-year bill, which is pending in the Assembly Ways and Means Committee, is supported in concept by BRN.

AB 127 (Frizzelle), as amended June 25, would require the California Commission on Health Care Policy and Financing to establish a cost-effective ranking within surgical, medical, and preventive health care procedures or courses of treatment, and to report its findings to the legislature no later than January 1, 1993. This two-year bill is pending in the Senate Health and Human Services Committee.

AB 2186 (Floyd), as amended June 19, would require the legislature to establish a Task Force on Registered Nursing to develop recommendations on effectively utilizing RNs in state government. This two-year bill is pending in the Senate Business and Professions Committee.

LITIGATION:

In *Morton v. Board of Registered Nursing*, No. G009757 (Nov. 15, 1991), the Fourth District Court of Appeal held that BRN properly revoked Audrey Morton's nursing license and that her petition for review was untimely filed. On July 31, 1989, BRN issued a decision revoking Morton's license; however, that revocation was stayed and Morton was placed on probation for one year under ten enumerated terms and conditions. BRN's decision was originally slated to be effective on August 31, 1989. Before that date, Morton complained in a letter to BRN that the penalty was excessive; BRN treated her letter as a petition for reconsideration and denied it on September 29, 1989. In that order, BRN rescheduled the effective date of its decision to October 13, 1989.

On November 30, 1989, Morton filed an emergency petition for writ of mandate under Code of Civil Procedure section 1085 and request for a stay of the probation. BRN countered that Morton's petition must be for administrative man-

date under Code of Civil Procedure section 1094.5, and should have been filed within thirty days of the effective date of the Board's order pursuant to Government Code section 11523. The trial court found that Morton's petition was properly and timely filed under Code of Civil Procedure section 1085 and that Government Code section 11523 did not apply. However, the trial court also found that BRN was authorized to discipline Morton as it did.

Following an appeal by both sides, the Fourth District affirmed the trial court's conclusion that BRN was authorized to discipline Morton, but also found that Government Code section 11523 required that Morton's petition for writ of mandate be filed "within thirty days after the last day on which reconsideration can be ordered. . . ." Pursuant to Government Code section 11521, the Board's last day to order reconsideration was "the date set by the agency itself as the effective date of the decision if that date occurs . . . at the termination of a stay. . . ." As applied to this case, BRN's September 29 order specified the decision would become effective October 13; as a result, a petition for judicial review was required to be filed in the superior court no later than November 12, 1989.

Further, the Fourth District rejected Morton's claim that her petition sought traditional mandate under Code of Civil Procedure section 1085, instead of administrative mandate under Code of Civil Procedure section 1094.5, noting that "simply calling a goose a duck will not make it quack." The court stated that traditional mandate may apply to review an agency's action if that action is compelled by law and does not involve a factual determination by that agency. However, in this case, no statute compelled revocation or any other particular action, and BRN was authorized to take such action in relation to disciplining Morton as the Board in its discretion may have deemed proper; the discretionary nature of the Board's decision compelled review under Code of Civil Procedure section 1094.5 and compliance with the thirty-day limit in Government Code section 11523.

RECENT MEETINGS:

At its November 22 meeting, BRN staff announced that the Board is currently being audited by the Department of Consumer Affairs. Staff anticipated that results of this audit would be available at the Board's January meeting.

Executive Officer Catherine Puri announced that BRN is working on an automated license identification system



which will enable employers to contact BRN via computer hook-up to directly check an RN's license record; staff expected to implement a pilot program in January. Dr. Puri also announced that she has met with DCA Director Jim Conran and that he is assisting BRN in ensuring that its recently-adopted disciplinary guidelines are provided to administrative law judges and deputy attorneys general. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 109 for background information.)

FUTURE MEETINGS:

May 27-28 in San Diego.
 July 22-23 in Oakland.
 September 23-24 in Bakersfield.
 November 18-19 in San Francisco.

BOARD OF CERTIFIED SHORTHAND REPORTERS

*Executive Officer: Richard Black
 (916) 445-5101*

The Board of Certified Shorthand Reporters (BCSR) 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).

BCSR 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.

MAJOR PROJECTS:

Board Establishes Equivalency Standards. At its December 14 meeting, the Board noted that AB 2002 (Horcher) (Chapter 1097, Statutes of 1991) amended Business and Professions Code section 8020(e) to provide that a person shall be admitted to the BCSR licensing examination if he/she submits satisfactory evidence to the Board that, within the five years immediately preceding the date of application for a license, the applicant has obtained a valid certified shorthand reporter certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination

are substantially the same as those in California; previously, the statute did not require the other states' requirements and licensing examinations to be substantially the same as those in California.

Board member Rod Clifton stated that this amendment requires the Board to review the standards of the other states that have CSR exams to determine which are "substantially the same as" California requirements. Clifton suggested that the Board consider (1) whether the state requires a written examination; (2) the nature of the machine portion of the state's exam; and (3) the percentage of accuracy required. The Board agreed that a state would have to require a written exam in order to be considered substantially equivalent to California, and agreed that any state which has an exam equivalent to that administered by the National Court Reporters Association should be considered to have substantially similar licensing requirements. Further, the Board reviewed the requirements of several states and agreed that Illinois, Iowa, Nevada, New York, Texas, and Utah have substantially similar requirements. In addition, applicants who passed the Idaho exam after February 1992 and those who received a Georgia "A" certificate after 1990 and took the entire exam (including the written portion) shall be admitted to the BCSR licensing exam.

The Board noted that, despite the unconstitutionality of residency requirements, the state of Nevada requires a person to be a resident before he/she may obtain a CSR license, even if the person has passed Nevada's licensing examination. The Board directed staff to consult with legal counsel to determine if, pursuant to the amended language in section 8020(e), the Board could allow a person who has passed the Nevada exam to sit for the California exam, rather than requiring that person to have a "valid certified shorthand reporter certificate or license" from Nevada.

The Board also discussed the fact that many students had taken the November Washington state exam, and perhaps other states' exams, believing that successful completion of that exam would qualify them to take the California licensing exam, as was the case prior to the passage of AB 2002. However, many of those states are not yet on BCSR's list of states recognized as having substantially similar licensing requirements. The Board directed staff to determine whether BCSR may make an exception and admit such applicants to the upcoming May examination only.

BCSR Proposes to Amend Curriculum Requirements. In late December, BCSR finally commenced the formal regulatory process to revise its school curriculum regulations. Section 2411, Title 16 of the CCR, currently specifies the minimum curriculum to be provided by court reporting schools recognized by the Board; those requirements have not been updated since 1979. According to the Board, its proposed amendments to section 2411, based on recommendations from a committee convened by BCSR, constitute "primarily language clarifications rather than new requirements." However, the amendments would increase the minimum amount of time required to be spent studying the fundamentals of English from 135 hours to 215 hours; eliminate the 1,320-hour requirement in the areas of shorthand, dictation, and transcription; decrease the required hours of medical terminology from 140 to 125; increase the time required to be spent studying legal terminology by five hours; and eliminate the requirement for courses on general office practice, thus deleting the current 40-hour requirement. Overall, the minimum number of academic hours a school is required to instruct in order to be approved by the Board would decrease from 1,940 to 600. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 107-08; Vol. 11, No. 2 (Spring 1991) p. 104; and Vol. 10, No. 4 (Fall 1990) pp. 104-05 for background information.)

Section 2420(a)(3), Title 16 of the CCR, currently states specific pass percentages for each part of BCSR's licensing examination. The Department of Consumer Affairs' Central Testing Unit has informed BCSR that such fixed points are contrary to the recommended practices of the testing profession. As a result, BCSR proposes to amend section 2420(a)(3) to delete the reference to the pass percentages.

The Board was scheduled to hold a public hearing on these proposed changes on February 22 in Burlingame.

OAL Approves Citation and Fine Rules. On December 12, the Office of Administrative Law approved BCSR's proposed new sections 2480 and 2481, Title 16 of the CCR, which implement a citation and fine program to remedy consumer complaints and discipline licensees. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 111; Vol. 11, No. 3 (Summer 1991) p. 108; and Vol. 11, No. 2 (Spring 1991) p. 105 for background information.)

RECENT MEETINGS:

At BCSR's November 7 meeting, Executive Officer Rick Black reported