



years due to numerous member vacancies on HADEC, that committee recently achieved its full membership and voted to assemble such a task force. One topic of discussion is SPAEC's contention that hearing aid dispensers are engaging in deceptive advertising. SPAEC and its licensees allege that many hearing aid dispenser advertisements are misleading in that they imply that the dispenser is offering or qualified to offer audiological services. Both SPAEC and HADEC hope to create a fact sheet with advertising guidelines for hearing aid dispensers, and plan to use their citation and fine authority to sanction violations.

SPAEC hopes the task force can address other issues outside the advertising problem. At its April meeting, Committee Chair Robert Hall suggested that the task force serve as an ongoing liaison to address issues of common concern. For example, the task force might discuss the appropriate definition of "hearing screening" and the distinction between "screening" and "testing," and determine the scope of practice into which it falls.

LEGISLATION:

SB 1119 (Presley). Existing law requires district attorneys, city attorneys, and other prosecuting agencies to notify the Medical Board of California (MBC) and the California Board of Podiatric Medicine (BPM) of any filings of felony charges against a licensee of either board. Existing law also requires the clerk of the court to transmit a certified copy of the record of conviction of a licensee to MBC or BPM, and to transmit any felony preliminary hearing transcripts to MBC or BPM, as applicable. As amended May 14, this bill would expand these requirements to also require notification to other applicable allied health professional program committees or boards, including SPAEC, of the filing of felony charges against licensees of those agencies, and transmission of records of conviction or felony preliminary hearing transcripts concerning licensees of those agencies. For licensees regulated by an allied health professional program, the record of conviction would be transmitted to both MBC and the appropriate allied health professional regulatory committee or board. [*A. Health*]

SB 2044 (Boatwright), as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including SPAEC, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the

capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill would also authorize the DCA Director to develop guidelines for mandatory continuing education programs administered by any DCA board. [*A. CPGE&ED*]

AB 3160 (Conroy), as amended April 29, would include the conduct of hearing screening within the definition of the practice of speech-language pathology. Previous language placing cerumen management within the practice of audiology was deleted. [*S. B&P*]

AB 2743 (Lancaster), as amended April 9, would rename SPAEC's enabling act as the Speech-Language Pathologists and Audiologists Licensure Act; provide that the fee for a duplicate wall certificate fee is \$40 and the duplicate renewal receipt fee is \$40; provide that all speech-language pathologist and audiologist licenses issued as of January 1, 1992, shall expire at midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed; provide that all initial licenses issued by SPAEC will expire at midnight on the last day of the birth month of the licensee during the second year after it is issued; and provide that, to renew an unexpired license, the licensee must, on or before the date of expiration of the license, apply for renewal on a form provided by SPAEC, accompanied by the prescribed renewal fee. [*A. Floor*]

SB 664 (Calderon). Existing law prohibits 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, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended March 12, this bill would also make this prohibition applicable to any subsequent charge, bill, or solicitation. This bill would also make it unlawful for any speech-language pathologist or audiologist to charge additional charges for any clinical laboratory service that is not actually rendered by that person to the patient and itemized in the charge, bill, or other solicitation of payment. This bill passed both the Senate and Assembly and is currently awaiting Senate concurrence in Assembly amendments.

RECENT MEETINGS:

At the Committee's January meeting,

the subcommittee which is developing SPAEC's Fine/Citation/Enforcement Manual reported that the project is still in progress. [*12:1 CRLR 87*] The manual will be used in implementing SPAEC's citation and fine regulations, adopted pursuant to Business and Professions Code section 125.9. Subcommittee member Gail Hubbard reported that she is working on the definition of the practice of audiology. Draft copies were to be provided to Committee members for review and critique before Hubbard proceeds. Hubbard also noted that she has not yet had an opportunity to begin the speech-language pathology portion.

Also in January, Executive Officer Carol Richards suggested that SPAEC consider modifying the direct supervision requirement for applicants who have completed their supervised professional experience in another state. In 1979, the Committee decided to require eight hours per month direct supervision during a candidate's year of required professional experience. Then, as now, the American Speech-Language-Hearing Association (ASHA) suggested a minimum of two hours per month direct supervision. The majority of the 39 other states requiring licensure follow the lead of ASHA. SPAEC tabled this issue.

At its April 2 meeting, SPAEC reviewed the practice of ear wax removal (cerumen management) by audiologists. At that time, AB 3160 (Conroy) would have expanded the scope of the practice of audiology to include ear wax removal. The Committee expressed its disapproval of such an extension of the audiology scope of practice, noting that no education or training in this area is currently mandated, and that the procedure is a high-risk invasive technique involving entry in a bodily orifice. AB 3160 was amended on April 29 to delete that provision (*see supra* LEGISLATION).

FUTURE MEETINGS:

September 11 in San Francisco.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel
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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



REGULATORY AGENCY ACTION

(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 California 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.

MAJOR PROJECTS:

Nursing Home Reform Act Update.

As a result of the 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 of 1987, HCFA published proposed rules implementing the federal reforms in the *Federal Register* on February 5 (57 Fed. Reg. 4516). [12:1 CRLR 87]

Among other things, the proposed rules relate to the use of physical and chemical restraints in nursing facilities and qualifications of nursing home administrators. The proposed regulations would define physical and chemical restraints and psychopharmacologic drugs, and specify when a facility may use physical and chemical restraints, how restraints are to be applied, and what documentation is required. Use of such restraints would be authorized only to ensure the physical safety of the resident or other residents, and upon a physician's written order that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances, as specified). In cases of emergency use, the regulations

would require that a facility obtain the order to restrain the resident as soon as an order can reasonably be obtained and would limit the time the order is in effect to twelve hours. Regarding the use of chemical restraints, the regulations would require that a drug review be conducted by an independent external consultant (a physician with experience or training in geriatrics and psychopharmacology); that review must include a review of the appropriateness of the indications for use, the dose, the duration of therapy, and the adequacy of monitoring.

Under existing California law (section 3116, Division 31, Title 16 of the CCR), in order to qualify for the nursing home administrator examination, a person must be at least eighteen years of age and have one of the following:

—a master's degree in nursing home administration or a related health administration field. The master's program shall have included an internship/residency of at least 480 hours in a skilled nursing facility or an intermediate care facility; or

—a baccalaureate degree and a BENHA-approved administrator-in-training (AIT) program of at least 1,000 hours; or

—ten years of full-time work experience, within the immediately preceding fifteen years, as a registered nurse in a nursing home and a BENHA-approved AIT program of at least 1,000 hours. At least five of the ten years of work experience shall have been in a supervisory position; or

—ten years of full-time work experience, within the immediately preceding fifteen years, in any department of a nursing home; 60 semester units (or 90 quarter units) of college or university courses; and a BENHA-approved AIT program of at least 1,000 hours. At least five of the ten years of work experience shall have been in a supervisory position.

The proposed HCFA regulations would require that an individual seeking employment as a nursing home administrator meet the license requirements imposed by the state in which the facility is located, in addition to the following:

—a baccalaureate degree (although HCFA invited public comment on whether the combination of a high school education and experience would be sufficient to enable an individual to be a competent administrator). It is uncertain whether individuals who are currently attempting to qualify for licensure under California law through work experience and participation in the AIT program, and who are unlicensed when HCFA's final rules are adopted, would be required to fulfill this

requirement;

—completion, to the state's satisfaction, of an internship program of at least twelve weeks in duration (except for those individuals who have managed a nursing home for at least one year); and

—a score of at least 75% on a state-selected standardized examination tailored to the state, a state-developed examination, or a national standardized examination. California law currently requires a score of at least 75% for a passing grade on its two-part examination. One part, a national examination, covers the broad aspects of nursing home administration; the other part, a state examination, is based on Division 5, Title 22 of the CCR, which pertains to nursing homes.

Additionally, the proposed regulations would require that administrators satisfactorily complete twenty hours of continuing education (CE) for any calendar year in which an individual serves as an administrator. Currently, California law provides that nursing home administrators who have been licensed by the Board for two years or longer are required to complete forty classroom hours of CE; nursing home administrators who, at license expiration time, have had active licenses issued by BENHA for less than two years, are required to complete between zero and forty hours of CE, depending on when they were initially licensed.

The regulations would also provide that any individual who has been continuously employed as a long-term care facility administrator by the same facility for at least one year on the date of publication of the final rule is deemed to meet the requirements, except that HCFA would not deem long-term care facility administrators to meet state licensure requirements or CE requirements. According to BENHA Executive Officer Ray Nikkel, this "grandparent" clause would not apply to approximately half of the presently licensed nursing home administrators in California, due in part to the frequent turnover of administrators; those individuals would probably have to satisfy HCFA's requirements.

Finally, the proposed regulations would provide that hospital administrators administering hospital-based nursing facilities may meet the current state requirements for hospital administrators in lieu of these requirements to the extent permitted under state law. California, like many other states, does not license hospital administrators. Therefore, Nikkel estimates that approximately 70 of the 108 currently licensed acute care hospitals with skilled nursing facilities in California would be forced to employ separate ad-



ministrators meeting the requirements of the proposed regulations.

At its April 7 meeting, BENHA discussed an analysis of the proposed rules prepared by the National Association of Boards of Examiners of Nursing Home Administrators (NAB), of which BENHA is a member. For example, regarding educational requirements for NHAs, NAB states that the proposed baccalaureate degree requirement is consistent with the stated position of the Association. However, NAB believes that it is best to leave decisions regarding the type of degree and the content of the courses to the individual states, inasmuch as certain programs and courses may not be readily available in all areas. According to NAB, a two-year grace period from the date of final publication is needed to allow individuals in the system to complete their training and also provide states with time to change their statutes if necessary.

While NAB endorses the concept of an internship or an AIT requirement, it recommends that the duration of the program be specified in terms of hours rather than weeks, and that a minimum of 1,000 hours be required. Regarding the proposed waiver of the internship requirement "if the individual has at least one year of management experience in a nursing facility," NAB contends that the term "management experience" is too broad and requests that it be defined.

Regarding the proposed examination rules, NAB contends that the requirement for a minimum passing score of 75% is arbitrary, psychometrically unsound, and legally suspect, because the proposal does not cite how the minimum requirement is to be derived, nor does it state the justification for establishing the cut score at 75%. Although the Association favors establishing a uniform passing score on a national standardized examination, NAB contends that the cut score or pass/fail level should be established in a manner which is professionally and legally defensible and which will ensure a national minimum standard of competency.

NAB strongly supports a national standardized examination, contending that the use of such an exam promotes uniform testing practices and permits professional monitoring of the development and administration of the examination. NAB contends it is not clear what HCFA means by "a state-selected standardized examination tailored to the state." In practice, there is only one national standardized examination—the exam administered by NAB. Also, NAB notes that the option for a "state developed examination" is vague, as such alternatives to a

national standardized examination could result in disjointed examination practices and inhibit the mobility of NHAs from state to state.

NAB endorses HCFA's proposal to require that practicing NHAs meet continuing education requirements of at least twenty clock hours per year. However, to avoid conflict with existing state practices, NAB recommends that the requirement be related to the licensing period rather than by calendar year. Additionally, NAB recommends that some specification be made concerning the content of the continuing education.

Regarding the proposed rules' grandparent clause, NAB recommends that the language be amended to provide that any individual holding a state license as a nursing home administrator is deemed to meet the requirements of the federal rules, except for those individuals with an expired, suspended, or revoked license at the time of the publication of the final rules. NAB asserts that the provision requiring one year of continuous employment in a single nursing facility does not necessarily ensure that one licensed NHA is more qualified than another. According to NAB, the proposed clause would impact at least one-third of the current practicing administrators; almost 10,000 licensed—but not currently practicing—administrators would lose their licensure status.

As to the waiver of these requirements for licensed hospital administrators who serve as administrators of a hospital-based nursing facility, NAB recommends that the language be amended to provide that, to the extent permitted by state law, a licensed hospital administrator may serve as administrator of a swing bed nursing facility without meeting HCFA's licensing requirements. NAB contends that the term "hospital-based" is ambiguous, as a growing number of hospitals now own nursing homes that are separate buildings which may be located on the same campus, but often are located blocks or miles away; NAB does not believe that these facilities would be served by HCFA's current proposal. In the spirit of the original legislation, NAB contends that any permanently-designated distinct part nursing facility should have a licensed nursing home administrator, whether the hospital administrator obtains a nursing home administrator's license or employs a separate licensed administrator.

HCFA was scheduled to accept written comments regarding the proposed rules through June; it is expected that public hearings will be held regarding the final language. BENHA's Ray Nikkel does not

anticipate the release of a final version of the regulations until August 1993, which will provide BENHA with time to revise its existing regulations to conform with the final regulations.

RCFE Administrator Licensing/Certification Program Update. At its February 5 and April 7 meetings, BENHA continued its discussion regarding the possible redirection of responsibility for administering the residential care facility for the elderly (RCFE) administrator certification program from the Department of Social Services (DSS) to BENHA. [12:1 CRLR 88; 11:2 CRLR 94]

At the April meeting, BENHA was addressed by DSS representative Gary Palmer, Branch Manager of Community Care Licensing, who is responsible for administering the RCFE administrator certification program at DSS. According to Palmer, there are approximately 4,200 RCFE facilities in the state and DSS expects to initially certify approximately 3,500 administrators pursuant to AB 1615 (Hannigan) (Chapter 848, Statutes of 1991). Although 85% of the facilities have six beds or less, Palmer noted that 85% of RCFE residents live in the 15% of the facilities which have more than six beds.

Palmer stated that DSS would not object to transferring responsibility for administering the RCFE certification program to BENHA. However, DSS plans to approve private vendors to provide the 40-hour certification program, and Palmer informed BENHA that DSS had already received applications from ten to twelve vendors. Although no vendors have been approved yet, DSS plans to move forward with the selection process within the near future.

Palmer also addressed the problem concerning facilities with six beds or less. Both DSS and BENHA are concerned with the potential cost associated with certifying such small facilities; DSS has proposed that the licensure of existing small facilities be waived but that administrators of such facilities be required to complete the certification program. In addition, the administrators of such facilities would not be required to take the written portion of the certification exam. Palmer qualified this exception to the written exam by stating that an administrator for any new facility or one with increased capacity would be required to take the written exam.

DSS anticipates that administration of the program will cost \$200,000 annually; this cost would be covered by a \$50 annual certification and renewal fee. DSS has allocated four staff members to oversee the program.



REGULATORY AGENCY ACTION

Following Palmer's presentation, BENHA formed a subcommittee consisting of Nancy Campbell and John Colen to analyze all aspects of the program and report its findings and recommendations at the Board's next meeting.

Examination and Enforcement Statistics. The pass rate for the January 9 state exam for nursing home administrators (NHA) was 60%; the national exam pass rate was 54%.

In February, BENHA issued its notice of nursing home administrators whose licenses are suspended or revoked or who were placed on probation through January 30; BENHA is required to publish this information pursuant to AB 1834 (Connelly) (Chapter 816, Statutes of 1987). As part of its implementation of AB 1834, BENHA provides the Department of Health Services (DHS) with a monthly list of all changes of facility administrators reported to the Board, as well as a list of all nursing home administrators who have had their licenses revoked, suspended, or have been placed on probation during the last three years. In return, DHS provides BENHA with copies of enforcement actions initiated against facilities including facility license revocation actions, final involuntary decertifications from the Medicare/Medi-Cal programs, and all class "AA" and "A" citations issued after July 1, 1988. The February report reveals that twelve NHAs are on probation, five of whom are presently working as the designated administrator of nursing homes in California.

From December 1, 1991 through March 31, 1992, BENHA received three citations from DHS for "AA" violations, which are violations of standards which lead to a patient's death, and 69 "A" violations, which seriously endanger a patient's safety with a substantial probability of death or serious bodily harm. BENHA conducted six informal telephone counselling sessions, issued two letters of warning, and requested three accusations against NHAs.

BENHA Releases Newsletter. In its February newsletter, the Board reminded NHAs that at least ten hours, or 25%, of each NHA's continuing education requirement must be in the area of aging or patient care. Courses relating to patient care may include any elements of the physical, psychological, or sociological aspects of care. Courses concerning aging should relate to the processes and facets of aging, and may relate to any of its biological, mental, or sociological implications.

LEGISLATION:

SB 2044 (Boatwright), as amended

April 2, would declare legislative findings regarding unlicensed activity and authorize all Department of Consumer Affairs boards, bureaus, and commissions, including BENHA, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. [A. CPGE&ED]

SB 664 (Calderon). Existing law prohibits 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, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended March 12, this bill would also make this prohibition applicable to any subsequent charge, bill, or solicitation. This bill passed both the Senate and Assembly, and is currently awaiting Senate concurrence in Assembly amendments.

The following bills died in committee: **AB 1191 (Epple)**, which would have, with specific exceptions, required 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; and **AB 95 (Friedman)**, which would have prohibited (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 to the use of the physical restraint, and the informed consent has been documented by the physician in the resident's medical record. AB 95 died in committee.

RECENT MEETINGS:

At its February 5 meeting, BENHA reviewed and approved a notice which will be sent to all licensees informing them of BENHA's plan to raise its biennial license renewal fee from \$190 to approximately \$225. At this writing, however, no legislation has been introduced to accomplish this fee increase.

At its April 7 meeting, BENHA reviewed its 1992 goals and objectives. BENHA's goals include establishing a 1993-94 budget based upon available resources that assures the continuance of

essential operations necessary to accomplish the Board's mission; obtaining legislative authorization to increase fees charged by the Board to ensure that adequate funds are available for the Board to carry out its functions; seeking legislation to move the RCFE administrator certification program from DSS to BENHA; providing input, reviewing, and implementing the new federal nursing home administrator standards; and taking appropriate remedial and formal disciplinary actions against licensees who violate the laws and regulations governing the management and operation of long-term care facilities.

Also at its April meeting, BENHA held its annual election of officers and unanimously elected James Wark to serve as chair, Nancy Campbell as vice-chair, and Strube Richardson as secretary.

FUTURE MEETINGS:

To be announced.

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger
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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. At the end of June 1992, two more positions will become vacant upon expiration of the terms of optometrist Gene D. Calkins and public member Joseph D. Abella.

MAJOR PROJECTS:

Board Votes to Repeal Examination Appeal Process. On February 20, the Board held a public hearing regarding its proposal to amend section 1533 and repeal section 1533.1, Division 15, Title 16 of the CCR, which would effectively abolish examination appeals. [12:1 CRLR 89] Currently, licensure candidates may appeal their exam score if they fail to receive a passing grade, cite the specific items in