



tions.

At its March 18-19 meeting, the Board discussed the recent recommendation of the Legislative Analyst's Office (LAO) to abolish all independent boards and bureaus within DCA, replace them with advisory boards, and consolidate the licensing and enforcement functions of these agencies into the Department; LAO contends that such an action would increase the efficiency and cost-effectiveness of state regulation of trades and professions. (See *supra* agency reports on LAO and DCA for related discussion.) Following a discussion, the Board unanimously agreed that its enforcement, consumer complaint handling, and licensing functions should remain separate from a consolidated unit within DCA, due to the specialized nature of pharmacy enforcement and the increasingly sophisticated nature of pharmacy practice.

Also at the March meeting, the Board discussed a request from the California Pharmacists Association (CPhA) to alter the Board's enforcement procedure. Specifically, CPhA had directed its staff to work with Board staff to accomplish the following changes: (1) before referral of an administrative action against a licensee to the Attorney General's Office, Board staff would provide an opportunity for the licensee to discuss the proposed action with Board staff; and (2) Board staff would provide notice to the licensee of any referral to the Attorney General's Office. Executive Officer Patricia Harris noted that throughout the investigation process, every opportunity is given to the licensee to provide information to the inspector. However, discussion of an investigation at the supervisory level would probably bog down the system, increase workload, and further delay an already lengthy process. Harris recommended that the Board not change the process as to do so would be contrary to public policy. The Board made no motion to amend its process, instead suggesting that the Board provide more education and information about the enforcement process to alleviate licensees' apprehensions without compromising investigations and administrative actions.

FUTURE MEETINGS:

October 14-15 in Los Angeles.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Executive Officer: Darlene Stroup (916) 920-7466

The Board of Registration for Professional Engineers and Land Surveyors (PELS) regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act, sections 6700 through 6799 of the Business and Professions Code, and the Professional Land Surveyors' Act, sections 8700 through 8805 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR).

The basic functions of the Board are to conduct examinations, issue certificates, registrations, and/or licenses, and appropriately channel complaints against registrants/licensees. The Board is additionally empowered to suspend or revoke registrations/licenses. The Board considers the proposed decisions of administrative law judges who hear appeals of applicants who are denied a registration/license, and those who have had their registration/license suspended or revoked for violations.

The Board consists of thirteen members: seven public members, one licensed land surveyor, four registered Practice Act engineers and one Title Act engineer. Eleven of the members are appointed by the Governor for four-year terms which expire on a staggered basis. One public member is appointed by the Speaker of the Assembly and one by the Senate Rules Committee.

The Board has established four standing committees and appoints other special committees as needed. The four standing committees are Administration, Enforcement, Examination/Qualifications, and Legislation. The committees function in an advisory capacity unless specifically authorized to make binding decisions by the Board.

Professional engineers are registered through the three Practice Act categories of civil, electrical, and mechanical engineering under section 6730 of the Business and Professions Code. The Title Act categories of agricultural, chemical, control system, corrosion, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, and traffic engineering are registered under section 6732 of the Business and Professions Code.

Structural engineering and geotechnical engineering are authorities linked to

the civil Practice Act and require an additional examination after qualification as a civil engineer.

On February 24, Governor Wilson appointed Ted Fairfield to serve as the Board's civil engineer member. Fairfield, founder of a civil engineer consulting firm in Pleasanton, has been registered as a professional civil engineer in California since 1962.

MAJOR PROJECTS:

Professional Land Surveyor Blue Ribbon Panel Controversy. PELS currently administers its own land surveyor examination, which is prepared by CTB McMillan/McGraw Hill (CTB) under a contract which extends until 1993. In October 1991, PELS passed a motion to resume the use—as of April 1993—of the national examination prepared by the National Council of Examiners for Engineering and Surveying (NCEES) for purposes of licensing land surveyors. The Board then appointed a blue ribbon panel of land surveyors to review the national examination and develop a supplemental California-specific exam to be administered with the national exam.

At PELS' February 14 meeting, Board member David Slawson indicated that the panel would recommend that PELS postpone the use of the NCEES professional land surveyor exam until 1994. In the interim, the panel recommended that PELS retain the current examination prepared by CTB. Following a lengthy discussion, the Board tabled the matter until its next meeting.

At its April 17 meeting, PELS resumed its discussion regarding the panel's recommendation. Additionally, the Board discussed the apparently recent revelation that many of the blue ribbon panel members had worked as subject matter experts to develop and grade California's current examination sold to the Board by CTB, and had received reimbursement for travel, lodging, and subsistence in excess of \$250 within the past twelve months from CTB. Based on these facts, Department of Consumer Affairs (DCA) legal counsel Don Chang opined that it may be inappropriate for the Board to consider some of the panel's recommendations. However, by a vote of 8-4, PELS agreed to postpone the implementation of the NCEES and the California-specific professional land surveyor exam to allow for the reorganization and new membership of the blue ribbon panel, and to work with NCEES to strengthen its exam; PELS agreed to retain the current CTB exam in the interim. The Board also directed Executive Officer Darlene Stroup to obtain



REGULATORY AGENCY ACTION

clarification from DCA's Legal Office regarding the requirements of the Fair Political Practices Commission as well as California common law regarding conflicts of interest.

OAL Rejects Experience Amendments. On January 2, PELS submitted its proposed changes to sections 424 (experience requirements for professional engineer registration) and 425 (experience requirements for land surveyor registration), Division 5, Title 16 of the CCR, to the Office of Administrative Law (OAL) for review. [12:1 CRLR 96; 11:2 CRLR 100-01] On February 18, OAL notified PELS that it had disapproved the proposed regulatory action, based on OAL's finding that the proposed changes did not comply with the necessity and clarity standards contained in Government Code section 11349.1, the regulatory file did not contain all required documents, and PELS did not adequately respond to public comments.

For example, OAL stated that the rulemaking record merely provides a generalized statement of the need for proposed section 425, and that it "does not demonstrate by substantial evidence the need for each provision of the regulatory action." Additionally, PELS' amendments referred to an "approved cooperative work-study engineering curriculum," "an approved four-year curriculum," and "an approved institution." However, OAL found that it "is unclear to persons directly affected by these two sections what is meant by 'approved.'"

Also, OAL noted that PELS was required to provide in the record a summary of comments and objections made to the proposed regulations and the Board's meaningful response to those comments. OAL found that commenter Robert Hoerger submitted nine pages of comments to PELS; over two of those pages concerned section 425(c). OAL found that PELS' one-sentence summary of those two pages, as well as PELS' response to the comments, was "wholly inadequate," as neither the summary nor the response addressed each of the concerns or comments raised by Hoerger.

PELS has 120 days from the date of rejection to correct these deficiencies and resubmit the rulemaking file to OAL.

Aiding/Abetting Regulations. On February 28, PELS published notice of its intent to adopt sections 472 and 473, Title 16 of the CCR, to define the term aiding and abetting as it relates to the practice of professional engineers and land surveyors. (The Board is expected to revise the section numbers assigned to this regulatory action, as it has already reserved section 472 for a separate pro-

posal [see *infra*].) [12:1 CRLR 94] Proposed section 472 would specify, for enforcement purposes, under what circumstances a PELS registrant may sign plans, specifications, plats, reports, or other documents signed by another individual. Proposed section 473 would require that any registered engineer or licensed land surveyor who associates with an unlicensed person, who is not a bona fide employee, in the preparation of engineering or land surveying documents must enter into a written agreement of association with that person. Section 473 would also require that the agreement be signed by both parties and contain the time period of the association, the name, address, and telephone numbers of the individuals entering into the agreement, and the specific decisionmaking role of the licensee during each step of the job, and that the licensee retain a copy of the agreement for ten years from the date of the completion of the project.

PELS held public hearings on these proposed sections on April 3 in San Pedro and April 16 in Sacramento; the public comment period was subsequently extended to May 18.

Other PELS Rulemaking. On January 10, PELS renoticed its intent to adopt new section 472 (fines for citations against a professional engineer or land surveyor). PELS had originally published notice of its intent to adopt new section 472 in January 1991; however, due to modifications made to the original language, PELS was unable to submit the rulemaking file to OAL within the maximum one-year period allowed by statute. [12:1 CRLR 96] Therefore, the Board decided to re-commence the regulatory process for this proposal, and conducted a public hearing on section 472 on March 20 in Sacramento. At this writing, staff is responding to comments received at the hearing and expected to present the section to PELS for adoption at its July 31 meeting.

On February 14, OAL approved PELS' proposed changes to sections 464 (single corner record) and 465 (time extensions for record of survey). [12:1 CRLR 96]

On May 8, OAL approved PELS' proposed amendments to section 424(b), which provides an exception to PELS' after-graduation experience requirement for cooperative work-study experience, and adds that a maximum of five years' experience shall be credited for graduation from an approved cooperative work-study engineering curriculum. [12:1 CRLR 96]

At this writing, PELS' proposed amendments to sections 404(k) and 404(l) and proposed adoption of new section

426.70, regarding the practice of electrical engineering, have not yet been submitted to OAL for review and approval. [12:1 CRLR 95]

LEGISLATION:

AB 3447 (Cortese), as amended April 21, would make numerous revisions to the Professional Land Surveyors' Act. For example, existing law provides that no record of survey of land shown on the county assessment roll as a unit or as contiguous units, which shows division of the land into additional parcels, shall be filed with the county surveyor or recorder without a certificate indicating compliance with the Subdivision Map Act and related local regulations. This bill would repeal those provisions. This bill would also require the record of survey to specify the physical relationship as determined by survey ties to existing monuments used to support the location of common lines of the survey and those portions of adjacent tracts, streets, or senior conveyances. [A. LGov]

AB 2512 (Hughes). The Professional Engineers Act prohibits any person from practicing civil, electrical, or mechanical engineering unless he/she is registered in the corresponding branch by PELS. Existing law defines the terms "electrical engineer" and "mechanical engineer." As amended April 6, this bill would delete those definitions and instead add definitions of the terms "electrical engineering" and "mechanical engineering." This bill would allow any person registered by PELS as a professional engineer to practice electrical or mechanical engineering, and would require all electrical engineering work and all mechanical engineering work, with specified exceptions, to be performed by or under the supervision of a registered professional engineer.

Existing law allows PELS to define by regulation the scope of each branch of professional engineering, other than civil engineering, for which registration is required. This bill would include electrical and mechanical engineering within the exception and also provide that PELS may define by regulation the scope of experience that may be used for evaluation of an applicant for registration as a civil, electrical, or mechanical engineer. This bill would also add a restriction that a registered or licensed professional engineer or land surveyor practice only in the fields in which he/she is, by education or experience, fully competent and proficient. The Board opposes this bill, which was referred for interim study on April 1 by the Assembly Committee on Consumer Protection, Governmental Efficiency and



Economic Development.

SB 1284 (Greene), as amended April 20, would provide that if a registered civil engineer is required to provide as built, as constructed, or record plans for improvements or grading, which plans show changes during the construction process, the plans shall be based on specified information depending on whether or not the registered civil engineer provided construction phase services on the project that include supervision of the construction of engineering structures. This bill would also provide that a registered civil engineer shall not be required to include a certificate or statement on as built, as constructed, or record plans that is inconsistent or varies with the provisions of the bill. [A. LGov]

AB 2888 (Conroy), as amended March 31, would have provided that, on or after July 1, 1993, no person shall practice photogrammetric surveying or use the title of photogrammetric surveyor unless he/she is a licensed photogrammetric surveyor, a registered civil engineer, or a licensed land surveyor. This bill would also have required PELS to establish qualifications and standards to practice photogrammetric surveying and establish fees for licensing applicants to practice photogrammetric surveying. This bill was rejected by the Assembly Consumer Protection Committee.

SB 2044 (Boatwright), as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including PELS, 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]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 96:

AB 1268 (Mays), as amended March 17, would revise the second division of the examination for registration as a professional engineer and the examination procedure for licensure as a land surveyor. This bill would require PELS to prescribe by regulation reasonable education or experience requirements, but not to exceed three years of either postsecondary education or experience in land surveying. [S. H&UA]

AB 1354 (Tanner), as amended April 20, would prohibit any person from engaging in the practice of chemical engineering unless he/she is registered by PELS. [S. B&P]

The following bills died in committee:

AB 1801 (Frazee), which, as amended April 1, would have required contracts for engineering services between registered professional engineers and consumers to be in writing and to contain specified provisions; **SB 201 (L. Greene)**, which, as amended January 6, would have amended the Professional Engineers Act to require that an applicant for registration as a professional engineer furnish evidence to PELS of eight years or more of qualifying experience in engineering work satisfactory to the Board; **AB 801 (Lancaster)**, which would have required any found, unreferenced, and unmarked monument found in connection with a survey used or accepted by a licensed land surveyor or registered civil engineer to mark or reference a point on a property or land line, to be marked or tagged permanently and visibly with the certificate number of the land surveyor or civil engineer accepting the monument; **AB 640 (Lancaster)**, which would have, among other things, deleted a provision of law that excludes public officers from the requirement that a record of survey be filed in specified circumstances; **SB 575 (L. Greene)**, which would have required, on the civil engineering examination, that the questions regarding seismic principles be general and conceptual in nature rather than specific structural design problems; and **SB 416 (Royce)**, which would have provided, on or after July 1, 1992, that no person shall practice photogrammetry or use the title of photogrammetric surveyor unless he/she is a licensed photogrammetric surveyor, a registered civil engineer, or a licensed land surveyor.

RECENT MEETINGS:

At its February 14 meeting in Santa Ana, PELS agreed to pursue budget change proposals to allocate an additional \$52,000 to fund technical experts for the Board's enforcement program and \$27,000 to cover examination expenses.

Also at its February meeting, the Board agreed to solicit input from PELS members, professional societies, registrants, licensees, members of the public, and staff regarding possible errors, overlaps, or areas of conflict in PELS' current regulations. That input will be used as the basis for a future Board workshop to consider necessary revisions.

At its April 17 meeting in Sacramento, PELS nominated Larry Dolson to serve as Board president and Larry Johnson as vice-president; the election was scheduled to take place at PELS' June 5 meeting.

FUTURE MEETINGS:

September 25 in San Diego.

November 20 in Sacramento.
December 18 in Los Angeles.

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.

On January 13, Governor Wilson announced three new appointees to BRN: RNs Judith Jonilonis of La Mesa and Genevieve Deutsch of San Diego, and physician Kim Enomoto of Rolling Hills Estates.

MAJOR PROJECTS:

Board Reaffirms Policy Regarding Implementation of Orders from Non-Physicians. In response to a restrictive 1988 Attorney General's Opinion, the Physician Assistant Examining Committee (PAEC) has spent the past few years amending its regulations to broaden the physician assistant's (PA) scope of practice. BRN has participated in PAEC's rulemaking proceeding on those proposed changes, objecting to some of the language. In January, the Office of Administrative Law (OAL) finally approved PAEC's amendments which, among other things, authorize PAs to initiate (or transmit an order to initiate) certain tests and procedures without patient-specific authorization from the supervising physician. Some nursing groups object to the fact that these regulations apparently authorize PAs to initiate orders to nurses. (See *supra* agency report on PAEC for related discussion.)