



it is to treat equals unequally. Following a review of the nature of dyslexia and other language processing handicaps, and the inherently individualized nature of such conditions, the court noted that the equal protection clause can hardly be read to require that every state-administered examination be individually adjusted to account for the myriad of differences in the mental ability of the population. The court noted that Hall was treated the same as other similarly situated test takers and she was given the same opportunity to take the practical examination that any other test taker had; the fact that she processes visual information differently from the norm did not deprive her of that opportunity.

In a somewhat unusual conclusion, the Fourth District commented that twentieth century vocations increasingly demand an ability to rapidly process words and symbols into decisions which are critical to the well-being of others; "[s]ociety cannot tolerate surgeons with palsy, airline pilots with heart conditions, firemen with vertigo and vision-impaired SWAT teams rescuing hostages." Further, the court opined that this lawsuit should never have been filed, stating that it "is the type of case in our over litigious society which has led economists, sociologists and even presidents to conclude our legal system is out of control."

Justice Thomas F. Crosby dissented from the majority's dismissal of the civil rights claims, noting that in a pleading case such as this the complaint should be construed liberally. Justice Crosby also stated that "[t]he unstated theme of the lead opinion—and its only possible justification—is that dyslexia is a disqualifying condition for the practice of veterinary medicine." Noting that several states (including California) apparently disagree with the majority on this point, Justice Crosby stated that "[t]his is not a problem to be resolved on demurrer, ... and is one defendants would possibly, even probably, lose before a trier of fact.... Plaintiff should be permitted to prove her case in the proper forum [assisted by expert testimony], not before an uninformed jury of two appellate judges applying Nineteenth Century law."

RECENT MEETINGS:

At the Board's January and March meetings, Dr. George Cardinet, Associate Dean of Instruction at the UC Davis (UCD) School of Veterinary Medicine, presented a report regarding alternative surgical courses at schools of veterinary medicine. [11:4 CRLR 115; 11:3 CRLR 111-12] At the request of its students, UCD conducted an eighteen-month study

on the viability of alternative surgical courses, and concluded that while live animal surgery may be necessary at some point in veterinary training, alternative surgical classes are feasible. With the cooperation of Washington State University, UCD developed an alternative surgical course program. UCD students may now take surgery courses without performing live animal surgery in the laboratory portion of the course, and substitute an alternative laboratory class taken at Washington State University. Students who take the alternative surgical class are required to take an additional eight weeks in small animal surgery and two weeks in anesthesia to ensure they have sufficient experience with live animals. Among the concerns voiced by various Board members about UCD's new program were whether alternative courses provide students with adequate surgical skills; whether UCD's new program is the result of pressure from animal rights groups; and whether UCD's use of public funds to defray students' cost of taking classes at Washington State University is improper. Associate Dean Cardinet defended the new program on grounds that it is a valid response to social and moral concerns regarding the use of pound animals, and alternative surgical classes may be necessary in the future because of the lack of availability of pound animals. He noted that these courses were adopted only after much research, study, discussion, and a vote of UCD faculty members. Dr. Cardinet pointed out that many veterinary colleges have similar alternative surgical course programs. Dr. Cardinet also stated that, since alternative surgical courses are a part of UCD's curriculum, UCD is obligated to provide funds to enable its students to take the courses. Various BEVM members commented that the Board should be concerned with the end results of alternative surgical methods as they affect the competency and quality of professional service to consumers and their pets.

At its January meeting, the Board discussed the results of a meeting between the Board's Continuing Education (CE) Committee and representatives of the California Veterinary Medical Association (CVMA). The CE Committee and CVMA reviewed the Department of Consumer Affairs' proposed CE program guidelines and found them valid, but costly. The CE Committee and CVMA decided to postpone the issue of CE indefinitely while further study is conducted; as a result of this decision, BEVM agreed to delete the CE requirements then pending in SB 663 (Maddy) (*see supra*

LEGISLATION). The Board proposed that it include in its next newsletter a report of the withdrawal of its CE proposal and a "recommendation" that veterinarians complete 50 hours of CE per license renewal period.

Also at its January meeting, the Board reviewed the Monthly Enforcement Statistical Report. Since July 1991, the Board opened 195 complaints and closed 296. During the month of December, the Board opened 31 complaints and closed 33.

At BEVM's May 7 meeting, Executive Officer Gary Hill reported on a discussion with representatives of the Board of Pharmacy regarding the growing problem of legend drug and extra-label over-the-counter drug use by non-veterinarians; due to a hole in the laws governing veterinarians and pharmacists, the unregulated use of these drugs results in excessive drug residues in the food animal chain. This problem has been of concern to the Board for some time and, at its May meeting, BEVM authorized Gary Hill to work with CVMA and the Pharmacy Board to develop a legislative solution. One of the options which may be discussed would require the Board of Pharmacy to create a specialty license for veterinary pharmacology; in the alternative, the use and control of all animal drugs could be placed under the jurisdiction of BEVM, which would issue special permits to sell veterinary drugs. [10:4 CRLR 108]

FUTURE MEETINGS:

September 10-11 in Sacramento.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Officer: Billie Haynes
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This agency regulates two professions: vocational nurses and psychiatric technicians. Its general purpose is to administer and enforce the provisions of Chapters 6.5 and 10, Division 2, of the Business and Professions Code. A licensed practitioner is referred to as either an "LVN" or a "psych tech."

The Board consists of five public members, three LVNs, two psych techs, and one LVN or RN with an administrative or teaching background. At least one of the Board's LVNs must have had at least three years' experience working in skilled nursing facilities.

The Board's authority vests under the Department of Consumer Affairs (DCA)



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as an arm of the executive branch. It licenses prospective practitioners, conducts and sets standards for licensing examinations, and has the authority to grant adjudicatory hearings. Certain provisions allow the Board to revoke or reinstate licenses. The Board is authorized to adopt regulations, which are codified in Division 25, Title 16 of the California Code of Regulations (CCR). The Board currently regulates 65,109 LVNs with active licenses, 38,450 LVNs with delinquent active licenses, and 12,063 with inactive licenses, for a total LVN population of 115,622. The Board's psych tech population includes 13,637 with active licenses and 5,021 with delinquent active licenses, for a total of 18,658 psych tech practitioners.

MAJOR PROJECTS:

Continuing Education and Biennial License Renewal for Psych Techs. On March 24, the Office of Administrative Law (OAL) approved the Board's adoption of sections 2592.1-2592.7, which require psych techs to complete 30 hours of continuing education (CE) per renewal period. On May 12, OAL approved the Board's amendment to section 2590, which changes the existing \$45 annual license renewal fee for psych techs to a \$90 biennial fee, and its adoption of new section 2590.1, which establishes a \$150 application fee for approval of CE providers. [12:1 CRLR 105] According to the Board, the conversion from an annual to biennial renewal cycle was required to implement the CE program.

At its March 13 meeting, the Board received an update on the conversion to biennial license renewal. Beginning with July 1992 renewals, the Board will begin converting half of the licensees each month from a one-year license to a two-year license. By converting only half of the licensee population each month, the Board's fund condition will not be adversely affected by the conversion. By 1994, it is anticipated that all licensees will be converted to a two-year license. Once a psych tech licensee is issued a two-year license, he/she will be required to submit proof of completion of thirty hours of CE in order to renew that license. Board staff is working the Department of Consumer Affairs' (DCA) Information Systems Division to modify its computer programs and revise renewal notices to reflect these changes.

Proposed Regulatory Action on Processing Times for Psych Tech CE Provider Permits. On April 10, the Board published notice of its intent to amend section 2567, Chapter 25, Title 16 of the

CCR, to specify the maximum time periods for processing applications for permits to act as psych tech CE providers. The proposed amendment would specify thirty days as the maximum period of time in which the Board will notify an applicant that his/her application to be a CE provider is complete or deficient and what specific information is required; and specify thirty days as the maximum period of time after the filing of a complete application to be a CE provider in which the Board will notify the applicant of a permit decision. At this writing, no public hearing has been scheduled on the proposed action; written comments on the proposed action were due by May 29.

Other Board Rulemaking. The following is a status update on rulemaking action recently undertaken by the Board:

—Accreditation Procedures. On March 24, OAL approved the Board's amendments to sections 2526, 2527, 2529, 2530, 2581, 2582, 2584, and 2485, regarding the accreditation of LVN and psych tech education and training programs. [12:1 CRLR 104]

—Curriculum Requirements. On March 24, OAL approved the Board's amendments to sections 2533 and 2587, which specify required curriculum content for LVN and psych tech programs. The amendments require content on communicable diseases (including AIDS) and specify that all curricular changes which alter the program's philosophy, conceptual framework, content, or objectives must be approved in advance by the Board. [12:1 CRLR 104]

—Intravenous Therapy for LVNs. On March 24, OAL approved the Board's amendments to section 2542 and its adoption of sections 2542.1 and 2542.3 (which expand the LVN scope of practice to allow LVNs who are intravenous therapy certified to start and superimpose intravenous fluids via secondary infusion lines) and the Board's amendments to sections 2547, 2547.1, and 2547.3 (which expand the LVN scope of practice to permit LVNs who are intravenous therapy and blood withdrawal certified to start and superimpose intravenous fluids via secondary infusion lines). [12:1 CRLR 104-05]

Auditor General Releases Report on Board Activities. On February 20, the Office of the Auditor General (OAG) released its report concerning the office productivity, staffing standards, personnel classifications, and revenue requirements needed for the Board to adequately and efficiently discharge its statutory functions. OAG conducted the audit in compliance with AB 4349 (Filante) (Chapter 1131, Statutes of 1990), which increased

the maximum fees the Board may charge for its LVN program; AB 4349 also mandated that OAG review and report to the legislature concerning the Board's operations. Because the legislation requiring OAG review increased fees for LVNs only, OAG focused its efforts on evaluating the Board's LVN program.

As a result of its audit, OAG found that from fiscal year 1986-87 through 1990-91, the Board's expenditures for its LVN program increased at a rate three times greater than the rate of inflation. However, OAG reviewed a sample of the expenditures and determined that the increases were generally justified or were caused by factors beyond the Board's control. For example, OAG found that some of the increased expenditures for salaries and wages and the Board's need for more office space were due to the Board's increased workload. Other expenditures, such as the Board's share of government administrative costs, were levied by other agencies and were not within the Board's control.

OAG also found that one Board staff member was not performing duties that justified her classification. The Board changed her duties without notifying DCA's personnel office; DCA therefore could not ensure that the staff member's classification was appropriate to her new duties. However, OAG noted that this inappropriate classification had a limited effect on the Board's total expenditures.

OAG also determined that the Board was unnecessarily keeping records of licenses which had expired more than four years ago. The Board receives data processing support from DCA and is charged based on the number of records it keeps on DCA's automated systems. DCA's budget office estimated that the Board could save \$5,000 per year if these unnecessary records were routinely purged. During the audit, the Board instituted a policy of periodically purging records it does not need from the automated records maintained for the Board by DCA.

OAG recommended that the Board correct the problem of the staff member found to be improperly classified and inform DCA's personnel office of changes in the duties of Board staff. The Secretary of the State and Consumer Services Agency (SCSA) responded that both DCA and the Board agreed that the increases in Board expenditures were justified or beyond the Board's control. SCSA further stated that DCA and the Board have already implemented OAG's recommendation.

Psychiatric Technician Occupational



Analysis. At its January, March, and May meetings, the Board heard an update on the occupational analysis which is being conducted of the psychiatric technician population to determine the validity of the California Psychiatric Technician Licensure Examination. The analysis, which is a joint effort of the Board and DCA's Central Testing Unit (CTU), is proceeding on schedule. During March, CTU interviewed 23 psych techs who have experience ranging from six months to five years and represent all aspects of practice. The psych techs were asked to identify categories of work, the job tasks performed in each category, and the knowledge, skills, and abilities (KSAs) necessary to perform each task.

CTU then prepared a preliminary list of major content domains, job tasks, and KSAs. Utilizing this information, CTU scheduled two workshops to critique and supplement the task and KSA statements, and to refine the major job content domains and operational definitions. The first workshop took place on April 9-10 in Napa; the second workshop was held in southern California on May 14-15. After the workshops, CTU is scheduled to create a questionnaire by developing rating scales (e.g., frequency, importance, and difficulty) and questions to obtain demographic data. The questionnaire is expected to be distributed to 2,000 licensees in September.

In December, CTU is scheduled to conduct a two-day workshop in southern California to review the results of the data analysis and evaluate the examination plan; the job analysis report is expected to be completed on December 31.

Computer Testing. The Board's exam contractor for its computerized psych tech exam, CTB MacMillan/McGraw-Hill, recently recommended that a practice test be administered during 1992 to augment the examination item bank of the California Psychiatric Technician Computer Administered Testing Project. According to the Board, the administration of a school-based practice test will enable it to field-test newly-developed test questions more rapidly. The first administration of the practice test took place on April 27-May 1 at Mt. San Antonio College in Walnut. The second administration took place on May 11-13 at Napa College in Napa. Additional administrations are scheduled to take place on July 27-31 at San Bernardino Valley College in San Bernardino, on November 2-6 at Santa Rosa Junior College in Santa Rosa, and at the Los Angeles CAT Office in December. The Board's goal is to administer the practice test to 450 psych tech licensure candidates; only

candidates who are within one month of graduation from their school program or who have previously failed the examination are eligible to take the test. All participants will receive a certificate of appreciation from the Board for their assistance in this endeavor.

At the Board's May 8 meeting, Supervising Nursing Education Consultant Teresa Bello-Jones reported on the National Council of State Boards of Nursing's (NCSBN) plan to convert from paper-and-pencil testing to computer adaptive testing for all LVN and registered nurse candidates. [11:4 CRLR 109; 11:3 CRLR 106] Three testing vendors are being considered as providers for this service; the final selection is expected to be made by NCSBN's Delegate Assembly in August. It is anticipated that the transition to CAT will enable applicants to be tested year-round; according to the Board, consumers will benefit because new licensees will enter the workforce more rapidly.

LEGISLATION:

SB 1813 (Russell), as amended April 2, is a follow-up bill to SB 1070 (Thompson) (Chapter 1180, Statutes of 1991). SB 1070 requires the Department of Health Services (DHS) to promulgate guidelines and regulations to minimize the risk of transmission of bloodborne infectious diseases in the health care setting by January 1993. It requires the Board and other health profession regulatory agencies to ensure that their licentiates are informed of their responsibility to minimize the risk of transmission of bloodborne infectious diseases in the health care setting, and makes it unprofessional conduct for a licentiate to knowingly fail to protect patients by failing to follow DHS' infection control guidelines.

SB 1813 would provide that, in investigating and disciplining LVNs and psych techs for knowing failure to protect patients from transmission of bloodborne infectious diseases in the health care setting, the Board shall consider referencing DHS' guidelines; it would also require the Board to consult with the Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and other agencies to encourage consistency in the implementation of this provision. [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 the Board, 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]

AB 2743 (Lancaster), DCA's omnibus bill, would authorize the Board to suspend or revoke a license issued to an LVN for, among other things, the use of excessive force upon or the mistreatment or abuse of any patient, or the failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law. The bill would also authorize the Board to deny any application or suspend or revoke any license issued under Chapter 6.5, Division 2 of the Business and Professions Code, based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board; and authorize the Board to issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any term of Chapter 6.5, but who has met all other requirements for licensure as an LVN and who has successfully completed the examination for licensure within four years of the date of issuance of the initial license.

The bill would also authorize the suspension or revocation of a license as a psych tech based upon the failure to maintain confidentiality of patient medical information, the commission of any act punishable as a sexually related crime, and the commission of any act involving dishonesty related to the duties and functions of the licensee. The bill would also authorize the Board to issue an initial license on probation, with terms and conditions, to any applicant who has violated any term of Chapter 10, Division 2 of the Business and Professions Code, but who has met all other requirements for licensure as a psych tech and who has successfully completed the examination for licensure within four years of the date of issuance of the initial license; authorize the Board to deny any application or suspend or revoke any license or permit issued under Chapter 10, based upon the denial of licensure, suspension, restriction of license, or voluntary surrender following the initiation of disciplinary action by another state, other government agency, or another California health care professional licensing board, of a license, registration, permit, or certificate to practice as a health care professional; and provide that a person whose psych tech license has been suspended or revoked may petition the Board for reinstatement or reduction of penalty no sooner than one year from the date of discipline. [A. Floor]



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AB 2435 (Hannigan). Existing law does not provide for a rehabilitation program for alcohol- or drug-impaired LVNs and psych techs. As amended April 9, this bill would establish a recovery program to provide for rehabilitation as an alternative or adjunct to traditional disciplinary actions of LVNs and psych techs experiencing problems related to chemical dependency or mental illness; require the Board to administer the recovery program by contracting with one or more professional providers or assistance programs; permit the Board to charge an administrative fee for each program participant; specify that the Board may refer licensees to the recovery program, or individual licensees may voluntarily participate in the program; provide for the confidentiality of information regarding participants, as specified; and require the Board to appoint a quality assurance and utilization review committee, of specified composition, to provide clinical consultation and review the activities of the recovery program. [S. B&P]

SB 664 (Calderon). Existing law prohibits LVNs and psych techs, 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 LVN or psych tech to assess 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 its January 24 meeting, the Board was addressed by DCA Director Jim Conran. In his remarks to the Board, Conran emphasized his commitment to ensuring that DCA's goal of consumer protection is achieved by all of the boards within the Department. In closing, Conran stressed that the most effective way to ensure consumer protection is through rigorous enforcement of licensing and competence standards.

Also in January, the Board elected Charles Bennett, LVN, as President and

Frances Junnila, LVN, as Vice-President of the Board; Regina Carey was introduced as the Board's new public member.

At the Board's March 13 meeting, Executive Officer Billie Haynes announced the resignation of Board member E. Charles Connor.

At the Board's May 8 meeting, President Charles Bennett announced the departure of psych tech member Bruce Hines. Hines served on the Board for ten years and was instrumental in obtaining the psych tech computer testing program and the legislation establishing a recovery program for licensees.

FUTURE MEETINGS:

September 10-11 in San Francisco.