



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. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

RECENT MEETINGS

At its August 28 meeting in San Diego, the Board praised Executive Officer Ray Nikkel for his efforts in convincing BENHA's counterpart board in Texas to adopt NAB's licensure process. Texas is the fiftieth state to adopt NAB's guidelines; previously, the pass rate on the Texas NHA exam was 99%. The Board also thanked outgoing BENHA members John Colen and Donald Henderson for their contributions to the Board.

FUTURE MEETINGS

December 9 in Los Angeles.

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 malfasant 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, including three public members and six licensed optometrists. Recently, Senate President pro Tempore David Roberti appointed public member R. Mona Tawatao to the Board; and Governor Wilson appointed Kenneth H. Woodard, OD, from Eyexam2000, and John R. Anthony, OD, a private practice optometrist.

MAJOR PROJECTS

Board Holds Public Hearings on Mobile Optometric Practice at Nursing Facilities and Optometric Technician/Assistant Category. In September, the Board held public hearings in Santa Ana and Sacramento on two issues: the desirability of allowing optometrists to operate mobile optometric units at nursing home facilities, and the proposed creation of a new optometric technician or assistant category. [12:2&3 CRLR 131]

With regard to mobile optometric practice, the discussion at both hearings focused on what constitutes "mobile." Section 1507(e), Title 16 of the CCR, states that mobile optometric facilities "may only function as a part of a school teaching program as approved by the Board." Therefore, current law apparently prohibits a licensed optometrist from using an equipped mobile van as an "office," whether at a nursing facility or elsewhere. However, since many nursing home residents are unable to travel to practitioners' offices for care, optometrists and other health care professionals typically visit nursing homes to provide such care (though generally not using a mobile office). At one of the hearings, a representative from the California Optometric Association (COA) stated that optometrists should be able to treat patients as needed at nursing facilities; COA also believes that patients can be protected by a policy of allowing optometric care at a nursing facility if requested by the patient, the patient's family or guardian, the patient's physician, or the administrator of the facility, followed by an appropriate note on authorization and treatment in the patient's chart. COA does not support an exclusively mobile operation by an optometrist without a permanent office location, as the Association believes this would pose a risk to patients of fraudulent activity.

COA's position corresponds to Business and Professions Code section 3076, which states that any registered optometrist temporarily practicing outside or away from his/her regular and registered place of practice shall deliver to each patient there fitted or supplied with glasses a signed receipt which indicates his/her permanent registered place of practice, the number on his/her license certificate, a specification of the lenses furnished, and the amount charged for them. Assuming an optometrist meets all of the legal requirements, COA believes that there should be no restriction on the number of patients seen at a given facility. Other hearing participants pointed out that

it is cost-efficient for an optometrist to see a number of patients at the same nursing home site, and that since it often is difficult to obtain quality professional care for such patients, this also makes good consumer sense. Some speakers opined that consumers will be protected if optometrists provide services only when requested, not by solicitation. There was also some discussion of existing "charitable" vision screenings offered in mobile vans at sites such as shopping centers and nursing facilities; although no one expressed opposition to such operations, participants queried whether they are authorized under current law.

The Board also heard testimony regarding the desirability of establishing a new category of optometric technicians or assistants. Practicing optometrists favored the proposal particularly since ophthalmologists currently utilize medical assistants or other health care personnel to perform routine duties. The Board heard testimony claiming that due to the lack of a corresponding category for optometric practice, optometrists work at a competitive disadvantage. COA's legal counsel suggested that the Board work through the legislative process—rather than the regulatory process—to enact such a change. Board and staff generally agreed; however, staff emphasized the value of the hearing process for eliciting information before proceeding with legislation. Hearing participants discussed the proper scope of practice for optometric technicians, generally agreeing that only optometrists should perform interpretive functions.

Budget Bill Impact. Last-minute negotiations in the legislature left the Board's 1992-93 budget authorization at the same level as 1991-92 (\$785,000). However, the 1992-93 Budget Bill, which was finally signed on September 2, requires special-funded agencies—including the Board—to reduce 1992-93 expenditures by 10% over 1991-92 expenditures, and transfer that 10% to the state general fund on June 30, 1993. Although Board operations will be impacted by this requirement, the burden is somewhat eased by the legislature's passage of AB 2566 (O'Connell) (*see infra* LEGISLATION), which permits the Board to increase licensing fees.

Occupational Analysis Update. Preliminary work has begun on the Board's occupational analysis of practicing optometrists to test their level of knowledge and to determine the scope of their practice. [12:2&3 CRLR 132] Such information will assist the Board in evaluating the current state licensure examination. The Board anticipates that the



company performing the study, Human Resources Strategies, will need about one year to complete its analysis and recommendations. Examination and Licensing Committee Chair Stephen R. Chun, OD, is heading the Board's overview of the study.

Rulemaking Update. Following a public hearing last February, the Board voted to amend section 1533 and repeal section 1533.1, Division 15, Title 16 of the CCR, to abolish its examination appeal process. [12:2&3 CRLR 130] Currently, candidates for licensure may appeal their exam score if they fail to receive a passing grade, cite the specified items in question, and adhere to specified time limits. The Board's action, which is opposed by COA, has not yet been submitted to the Office of Administrative Law for review and approval.

At its August 24 meeting, the Board again discussed whether to commence the rulemaking process to change several existing regulations. For example, the Board considered an amendment to section 1510, Title 16 of the CCR, to provide that failure to inform any patient for whom treatment is prescribed, in terms understandable to that patient (or legal guardian, if appropriate), of the risks and benefits of the treatment constitutes professional inefficiency.

The Board also discussed draft amendments to section 1535, Title 16 of the CCR, regarding examination requirements. These changes would provide that, in addition to the requirements set forth in Chapter 7 of Division 2 of the Business and Professions Code, applicants for licensure must successfully complete the National Board of Examiners in Optometry Basic and Clinical Sciences Examination, the Board's practical examination, and the Board's law examination. Section 1535 would also provide that applicants may fulfill these requirements in any sequence; however, in no case shall the total period in which these requirements are met exceed five years.

The Board also considered the possible adoption of new section 1566, Title 16 of the CCR, regarding the release of contact lens prescriptions. One proposed version of section 1566 would provide that once a patient has been fit for contact lenses and the examining optometrist has determined that he/she demonstrates satisfactory vision, comfort, and physiological responses, the patient may request a copy of his/her contact lens prescription, which must include the information necessary to properly duplicate the current prescription; the prescription must be provided at no additional cost to the patient. This ver-

sion of section 1566 would also provide that an optometrist is not liable for any injury or condition to a patient resulting from negligence in the manufacturing or dispensing of contact lenses by anyone other than the prescribing optometrist.

A second proposed version of section 1566 would provide that at each office there shall be posted in a conspicuous place a notice to consumers regarding the release of prescriptions, which shall clearly state the legal requirements and office policy regarding the release of eyeglass and contact lens prescriptions. This release would have to contain the following information:

—a statement that pursuant to federal regulations, a patient is entitled to a copy of his/her eyeglass prescription, if one is determined, immediately following an eye examination; release of a contact lens prescription is at the discretion of the optometrist;

—the optometrist's policy regarding contact lens prescriptions, which shall address whether a patient will be provided with a copy of his/her contact lens prescription upon request and, if applicable, at what point a prescription will be released (e.g., after the initial examination but prior to contact lens fitting, or upon successful fitting by the optometrist and completion of follow-up care); and

—a statement informing the patient of the importance of follow-up care after the initial contact lens fitting.

The Board plans to engage in further discussion regarding all of the above proposed regulatory actions before deciding whether to commence the formal rulemaking process.

UCLA Optometry Refresher Course. In late June, the Board published another notice seeking optometrists to teach the clinical sciences review portion of the optometry refresher course designed by the Board and the University of California. The course commenced in September 1991 through the UCLA Health Sciences Extension Program. [12:2&3 CRLR 131] According to Board President Thomas R. Nagy, OD, "[t]his program provides an opportunity for both American and foreign-trained optometry school graduates seeking licensure to enhance their knowledge and proficiency in general optometry, and as members of the optometric profession I encourage your participation in this program."

The Board has taken a more active role in promoting the success of the program of late. At the Board's August 24 meeting, the Credentials Committee reported that the Board's advertising has proven effective in soliciting instructors.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 132-33:

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including the Board of Optometry, 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 was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

AB 2566 (O'Connell). Existing law limits the amount the Board of Optometry may charge for its license application and renewal fees. Currently, the Board's application fee may not exceed \$75; if an applicant is found ineligible to take the exam, the applicant is entitled to a refund of no more than \$50. The current renewal fee is limited to \$85. This Board-sponsored bill raises the application fee ceiling to \$275; the refund ceiling to \$175; and the renewal fee ceiling to \$150. This bill was signed by the Governor on September 12 (Chapter 645, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits optometrists, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill also makes it unlawful for any optometrist to assess additional charges for any clinical laboratory service that is not actually rendered by the optometrist to the patient and itemized in the charge, bill, or other solicitation of payment. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

SB 613 (Calderon) was substantially amended and is no longer relevant to the Board of Optometry.

The following bills died in committee: **AB 3242 (Isenberg)**, which would have provided that the practice of optometry includes examination of the adnexa of the human eye and the analysis and diagnosis of conditions of the human vision system, either subjectively or objectively; and **AB**



1479 (Burton), which would have specified that, for purposes of the Robert W. Crown California Children's Services Act, any condition designated by the Director of Health Services as treatable by an ophthalmologist is deemed treatable by an optometrist if the condition is within the scope of practice of optometry.

RECENT MEETINGS

At its August 24 meeting, the Board reported on a discussion with the Medical Board of California's (MBC) Division of Allied Health Professions regarding existing law as it relates to the relationship between optometrists and opticians sharing office space. Business and Professions Code section 655 prohibits optometrists and opticians from entering into any "membership, proprietary interest, co-ownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly...." The Board of Optometry interprets section 655 as prohibiting an optician from sharing office space with an optometrist. However, the Medical Board's Registered Dispensing Optician Program (RDO) contends that, so long as there is no violation of section 655, an optician may share office space with an optometrist.

RDO further contends that no consumer harm can result from an optician sharing an office with an optometrist, and that it is to consumers' benefit to have an optometrist in the same office. According to Attorney General's Opinion No. 80-417 (March 4, 1981), the legislature intended to prohibit landlord-tenant business relationships between optometrists and opticians "in order to eliminate the potential conflicts of interest inherent in them." All of the agencies involved are expected to further investigate the issues involved; MBC is considering whether to request a second legal opinion in light of repeated inquiries regarding the propriety of office-sharing relationships.

FUTURE MEETINGS

To be announced.

BOARD OF PHARMACY

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Pursuant to Business and Professions Code section 4000 *et seq.*, the Board of Pharmacy grants licenses and permits to pharmacists, pharmacies, drug manufacturers, wholesalers and sellers of hypodermic needles. It regulates all sales

of dangerous drugs, controlled substances and poisons. The Board is authorized to adopt regulations, which are codified in Division 17, Title 16 of the California Code of Regulations (CCR). To enforce its regulations, the Board employs full-time inspectors who investigate accusations and complaints received by the Board. Investigations may be conducted openly or covertly as the situation demands.

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

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

MAJOR PROJECTS

"Operation Goldpill" Targets Pharmacy Fraud. On June 30, U.S. Attorney General William Barr and FBI Director William Sessions announced that more than 1,000 FBI agents and 120 other federal law enforcement officers were making arrests, conducting searches, and seizing assets in over 50 cities nationwide, including San Francisco, as part of "Operation Goldpill," the most widespread criminal fraud investigation of the health care industry ever carried out by the FBI. At this writing, federal authorities have seized 56 pharmacies and arrested 82 pharmacists, including one San Francisco-based pharmacist.

Operation Goldpill consisted of a two-year FBI investigation which uncovered illegal diverting, repackaging, and distribution of medications and intentional excessive or false billing by pharmacists which defrauded federally-funded programs and private insurance companies. Among other things, the FBI found evidence that numerous pharmacists were filling prescriptions with generic drugs and charging consumers for more expensive brand name drugs, billing Medicaid and insurance carriers multiple times, and billing for prescriptions never written or filled. The federal government is charging such individuals with fraud and conspiracy offenses which carry prison terms of five to fifteen years and fines up to \$250,000.

OAL Approves Pharmacy Technician Regulations. On August 12, the Office of Administrative Law (OAL) approved the Board's amendment to section 1717(c) and adoption of new sections

1793-1793.7, Title 16 of the CCR. This regulatory action establishes qualifications and registration procedures for pharmacy technicians who may assist registered pharmacists with specified tasks, pursuant to AB 1244 (Chapter 841, Statutes of 1991), and should pave the way for implementation of the Board's new oral consultation requirement (*see infra*). [12:2&3 CRLR 135]

Patient Consultation Regulations. On May 28, OAL approved the Board's amendments to sections 1707.1 and 1707.2, Title 16 of the CCR, delaying until November 1 the effective date of the Board's patient consultation regulations, which require pharmacists to maintain patient medication profiles for all ongoing patient-consumers and to provide an oral consultation to each patient or patient's agent whenever a new prescription is dispensed, with specified exceptions. [12:2&3 CRLR 135]

On August 28, the Board published notice of its intent to further amend sections 1707.1 and 1707.2, and to adopt section 1707.3, regarding the patient consultation requirements. According to the Board, these proposed changes would align existing California pharmacy regulations with provisions of the federal Omnibus Budget Reconciliation Act of 1990 (OBRA 90) which establish patient consultation by pharmacies as a requirement for Medicaid-covered patients and specifies required and permissive duties for pharmacists in this regard.

As of November 1, section 1707.1 requires a pharmacy to maintain a patient medication profile for each patient it serves and specifies certain elements this profile shall contain for each patient and each prescription. Section 1707.1 also specifies the retention period for the patient's medication profile. The Board's proposed amendments to section 1707.1 would add several express identifiers required by OBRA 90, such as the patient's telephone number, date of birth or age, and gender. Also, section 1707.1(a)(1)(C) would be amended to require that the patient medication record include any of the following which may relate to drug therapy: patient allergies, idiosyncracies, all prior and current medications including non-prescription medications and relevant devices, or medical conditions which are communicated by the patient or the patient's agent.

As of November 1, section 1707.2 clarifies the duty to consult and the notice to consumers regarding the consultation, which must be conspicuously posted in each pharmacy subject to Business and Professions Code section 4333. The