Public Records Act (PRA). In January 1991, CPIL requested agency records from PELS under the PRA; among other things, CPIL requested copies of documents relating to closed consumer complaint or enforcement files opened by PELS due to consumer complaints alleging billing disputes between professional engineers and consumers. PELS denied CPIL's request for the documents, claiming that the documents are exempt from disclosure under Government Code section 6254(f), the exemption for investigatory or security files compiled for law enforcement or licensing purposes, as well as the Information Practices Act (Civil Code section 1798 *et seq.*). CPIL contested the refusal on grounds that the Board can hardly open "investigatory files" on complaints over which it expressly and consistently refuses to take enforcement jurisdiction. *[10:2&3 CRLR 119]* Oral argument regarding CPIL's petition is scheduled for December 18.

RECENT MEETINGS

At its June 5 meeting, PELS elected Larry Dolson as President and Richard Johnson as Vice-President for one-year terms commencing July 1.

PELS cancelled its July 31 meeting due to budget constraints.

At its September 25 meeting, PELS announced that Board offices had relocated to 2535 Capitol Oaks Blvd., Suite 300, Sacramento, California 95833.

FUTURE MEETINGS

December 18 in Sacramento.

BOARD OF REGISTERED NURSING

Executive Officer: Catherine Puri (916) 324-2715

Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 *et seq.*, the Board of Registered Nursing (BRN) licenses qualified RNs, certifies qualified nurse-midwifery applicants, establishes accreditation requirements for California nursing schools, and reviews nursing school curricula. A major Board responsibility involves taking disciplinary action against licensed RNs. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR).

The nine-member Board consists of three public members, three registered nurses actively engaged in patient care, one licensed RN administrator of a nursing service, one nurse educator, and one licensed physician. All serve four-year terms.

The Board is financed by licensing fees, and receives no allocation from the general fund. The Board is currently staffed by 60 people.

MAJOR PROJECTS

Nurses Fail in Bid to Supersede Physician Assistants' Scope of Practice Regulations. As predicted, over the summer the California Nurses Association (CNA) convinced Assemblymember Tricia Hunter to amend AB 569 to supersede the Physician Assistant Examining Committee's (PAEC) new scope of practice regulations which became effective in February 1992.

Existing law and PAEC's scope of practice regulations provide that a physician assistant (PA) may perform medical services authorized in scope of practice regulations adopted by the Medical Board's Division of Allied Health Professions (1) under the supervision of a licensed supervising physician (SP), and (2) pursuant to protocols developed by the PA and his/her SP, or pursuant to a patient-specific order by the SP. As amended June 8, AB 569 would have added a new condition—the SP must be available by electronic means and within a 30-minute radius of the site where the PA is providing services. Additionally, AB 569 would have expressly precluded PAs from initiating orders for nursing services, admitting patients for inpatient hospital care, and performing surgical procedures under certain circumstances.

In sponsoring the amendments, CNA argued that PAEC's new scope of practice regulations, which (among other things) permit PAs to initiate patient care orders to RNs, violate the Nursing Practice Act. According to CNA, the Act prohibits an RN from accepting an order initiated by a PA. CNA conceded that, under the Act, an RN may implement a physician's order transmitted by a PA. CNA further argued that it has consistently opposed permitting PAs to intervene between the nurse and the physician, and that it believes the quality of patient care can be endangered by having a third party initiate orders. Although BRN never took a position on the amended legislation, it recently reaffirmed its long-held position that RNs may accept orders initiated only by those health care practitioners identified in Business and Professions Code section 2725(b), which states that RNs may take specified action necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist. *[12:2&3 CRLR 141–42]*

PAEC and the California Academy of Physician Assistants (CAPA) immediately took an oppose position on the legislation, arguing that the bill would adversely affect the availability, timeliness, and quality of health care services provided to over three million Californians; increase service delivery costs and reduce the operational efficiency of hundreds of medical offices, clinics, and hospitals; and constrict the long-established scope of practice of California's 2,200 licensed PAs. Specifically, PAEC objected to the "30-minute radius" rule as being excessively rigid; the Committee noted that administrative law judges have used a "reasonable and prudent" rule to determine if the time and distance separating the physician from the PA is so great as to be potentially injurious to the health and well-being of a patient. PAEC also argued that PAs have been transmitting and initiating orders to nurses ever since 1975 when PAs were first licensed in California. Those orders are based on the SP's written and specific delegation of authority to the PA, and the SP is always held ultimately responsible for all care ordered or given to his/her patient by a PA.

Although both CNA and the California Medical Association supported the June 8 version of AB 569, the Senate Business and Professions Committee suggested several amendments to the bill at a hearing on June 29. As requested, Assemblymember Hunter amended AB 569 again on July 2. The July 2 version deleted the "30-minute radius" rule, but retained the provisions prohibiting a PA from initiating orders for nursing services and from "independently" admitting patients for inpatient hospital care.

PAEC and CAPA renewed their vigorous opposition, arguing that there have been no administrative disciplinary decisions against PAs for gross negligence, and none for issuing orders to RNs or others which could have or did lead to significant patient harm. PAEC Executive Officer Ray Dale stated that he could find no civil or criminal action in which the initiation of a physician's patient care order by a PA was at issue or found to be illegal, and no court case holding that it is illegal for a nurse to follow a physician's order which has been transmitted to the nurse by a PA. In response to CNA's argument regarding the authority of an RN to implement an order initiated by a PA, PAEC noted that the Office of Administrative Law reviewed its scope of

practice regulations for consistency with other statutes and approved them.

The July 2 version of AB 569 was scheduled for an August 3 hearing; however, Assemblymember Hunter deleted all language relating to PAs from the bill on July 29. PAEC and CAPA noted that this issue will likely be resurrected, and agreed to begin a dialogue with CNA and promote a more collaborative approach to this issue and to health care in general.

Board Reports on the Effectiveness of Fingerprint Program. In 1990, BRN implemented its fingerprint program to prevent the licensure of potentially unsafe nurses with criminal convictions, and to receive immediate notice regarding arrests of currently licensed nurses. Effective August 1, 1990, applicants for BRN licensure must submit their fingerprints, which are used by the state Department of Justice and the FBI to track prior convictions nationwide. Prior to the program's inception, the Board relied primarily on self-disclosure and complaints in screening RN applicants. The development of the fingerprint program allows BRN to conduct a more thorough investigation of applicants by uncovering criminal convictions which could substantially affect the practice of nursing, and enables BRN to track licensee misconduct by being immediately notified of post-licensure arrests.

At its May 28–29 meeting, BRN reported that its fingerprint program has been quite successful in screening potentially unsafe RN applicants. During the first 18 months of the program alone, the number of convictions reported by applicants substantially increased from 320 to 922. BRN speculates that this tremendous jump in disclosure is due to the fingerprint requirement, which causes applicants to be more forthcoming about convictions than in previous years. In addition, the program has revealed 135 individuals who failed to disclose that they had criminal convictions when filling out their applications for licensure.

In its report, the Board emphasized that it considers only criminal convictions, not arrests, when evaluating RN applicants. Moreover, these convictions must have a substantial relationship to the practice of nursing for the applicant to be denied licensure on those grounds. Such convictions include child or spousal abuse, drug possession and/or addiction, battery, and assault with a deadly weapon. An applicant with a criminal conviction may still obtain an RN license if the conviction is not substantially related to the practice of nursing, or the recency of the conviction is not critical, and he/she can provide adequate evidence of rehabilitation.

With regard to the subsequent arrest notice feature of the fingerprint program, BRN has been notified of 13 arrests of licensees during the first twenty months of the program. The Board anticipates that the effectiveness of this pattern-detection feature will increase as the population of RN licensees who have been fingerprinted grows.

CGFNS Qualifying Exam Still a Valid Predictor of NCLEX-RN. At its May meeting, BRN reviewed the results of a validity study conducted by the Commission on Graduates of Foreign Nursing Schools (CGFNS) to determine whether CGFNS' qualifying examination accurately predicts success on the RN licensing examination (NCLEX-RN). The primary purpose of CGFNS is to identify promising foreign-educated candidates for RN licensure in the United States through its Preimmigration Certification Program, which evaluates the credentials of foreign-educated nurses and administers an examination testing nursing knowledge and English language proficiency. This test, the CGFNS qualifying examination, predicts a foreign candidate's success on the NCLEX-RN, which most boards of nursing, including BRN, require for RN licensure. Since 1980, the Department of Labor has required CGFNS certificates from foreign-educated nurses seeking work permits, and the U.S. Immigration and Naturalization Service has depended on the CGFNS certificate to identify candidates who are eligible for nonimmigrant occupational visas.

According to the study, 76.9% of those applicants who earned CGFNS certificates in April 1988 had passed the NCLEX-RN by the end of the 1990; 67% of the applicants who passed the CGFNS examination on their first attempt also passed the NCLEX-RN their first time; and only 35% of the applicants not holding CGFNS certificates passed the NCLEX-RN on their first attempt. According to the study, these results appear to establish the CGFNS qualifying examination as a valid predictor of success on the NCLEX-RN.

Computer Adaptive Testing. At its August 18–22 meeting, the Delegate Assembly of the National Council of State Boards of Nursing (NCSBN) discussed and voted upon some preliminary issues regarding administration of the NCLEX-RN through computer adaptive testing (CAT). *[12:2&3 CRLR 143]* The Assembly chose Educational Testing Services (ETS) as the contractor and national vendor of NCLEX-CAT. The examination fee for CAT will be $88; $26 of that amount will go to NCSBN and $62 will go to ETS. NCSBN also approved a new form of the contract between member boards and the national council, incorporating changes necessary for the successful implementation of CAT.

In preparation for CAT, BRN announced at its September 24–25 meeting that certain "housecleaning" amendments to the Nursing Practice Act would have to be enacted. Accordingly, staff presented to BRN a draft of proposed legislation that would modify Business and Professions Code section 2732.1(a) to add a six-month maximum time period for the validity of interim permits. BRN reported that this six-month period should allow ample time for applicants to schedule their CAT exams and receive result notification. BRN generally approved the proposed legislation, but sent it back to legal counsel for fine-tuning.

BRN Considers Policy on Abandonment of Patients by RNs. At its September 24–25 meeting, BRN noted that staff receives numerous inquiries regarding the actions of an RN which could constitute patient abandonment and thus lead to discipline against an RN's license. The Board noted that the term "abandonment" is currently used to cover a number of situations, such as the following:

–an RN who fails to appear to fulfill an assigned shift(s) and fails to notify the hospital that he/she will not be coming into work;

–an RN who shows up for an assigned shift but refuses to accept a patient assignment, for reasons such as an unreasonably heavy patient assignment, the nurse feels he/she cannot adequately meet the demands of the assignment, the assignment requires skills and/or competencies the RN does not possess, and personal reasons, such as a fear of receiving a communicable disease;

–an RN who refuses to work extra shifts, double shifts, or other overtime; and

–an RN who leaves his/her work part way through his/her shift, without arranging for, or allowing adequate time for arrangement for, patient care coverage.

The Board reviewed a proposed BRN policy which would provide that for patient abandonment to occur, an RN must have first accepted a patient assignment, thus establishing a nurse-patient relationship, and then severed that nurse-patient relationship without giving reasonable notice to the appropriate person so that arrangements can be made for continuation of nursing care by others. Further, the policy would provide that a nurse-patient relationship begins when responsibility

for nursing care of a patient is accepted by the nurse. Under the policy, BRN would not consider refusal to accept an assignment or a nurse-patient relationship, failure to notify the employing agency that the nurse will not appear to work an assigned shift, or refusal to work additional hours or shifts to constitute patient abandonment.

Following discussion, BRN referred the matter back to its Nursing Practice Committee for further review and consideration.

DCA Internal Audit Office Reviews BRN Procedures. At its May 28–29 meeting, BRN reviewed the final audit report prepared by the Department of Consumer Affairs' Internal Audit Office, which studied and evaluated BRN's systems of internal accounting and administrative control procedures in effect between July 1, 1989 and June 30, 1991. According to the audit report, the broad objectives of control systems for state agencies are to provide management with reasonable, but not absolute, assurance that assets are safeguarded from unauthorized use or disposition; transactions are executed in accordance with management's authorization and recorded properly to permit the accurate preparation of financial reports; other fiscal compliance procedures are implemented to ensure the reliability and integrity of information; and control systems are established to ensure compliance with policies, plans, procedures, laws, and regulations, including the State Administrative Manual.

According to the Internal Audit Office, BRN's systems of internal accounting and administrative controls and fiscal compliance procedures in effect as of June 30, 1991, taken as a whole, were sufficient to meet those broad objectives insofar as those objectives pertain to the prevention or detection of errors or irregularities in amounts that would be material in relation to the financial reports.

Nursing Practice Committee Goals and Objectives. At BRN's May meeting, the Nursing Practice Committee announced the following goals for the 1992–93 year:

• The Committee will continue to research regulatory language that will allow RNs to assign tasks to ancillary personnel. In connection with this goal, the Committee will seek input from professional organizations and inform nursing communities of legal boundaries of assigning tasks.

• The Committee will identify and analyze current issues pertinent to nursing practice and congruency with the Nursing Practice Act and the standard of practice, monitor activities of other regulatory agencies to ensure that any actions which effect RN practice are in accord with the Nursing Practice Act, and establish BRN's position on abandonment (*see above*).

• The Committee will promote an increased quality of care for the aging patient, by continuing to work with the Department of Aging to improve the quality of care in health care facilities, and collaborating with staff of the Department of Health Services' Division of Licensing and Certification to facilitate surveyor interpretation of the Nursing Practice Act.

• The Committee will monitor issues related to advanced levels of nursing practice, establish an oral exam for equivalency applicants for certified nurse-midwives, and promote common interpretation of procedures requiring standardized procedures in nursing practice.

Licensing Committee Goals and Objectives. Also at BRN's May 28–29 meeting, the Licensing Committee announced its goals and objectives for 1992–93, which are the following:

• The Committee will develop a process assuring a job-related national examination and diligent continuation of the Board's commitment to eliminating any artificial barriers to licensure.

• The Committee will assure a smooth transition from the NCLEX paper-and-pencil testing to the NCLEX Computer Adaptive Testing.

• The Committee will develop an effective and comprehensive system for monitoring the continuing education program and assuring compliance of providers and licensees with BRN requirements.

Board Implements Travel Limitations Due to Budget Constraints. On September 2, Governor Wilson signed a state budget which substantially limits travel expenditures that could be utilized by most of California's regulatory agencies, including BRN. Specifically, the budget reduces the amount of travel money allocated to special-funded agencies by 50%. Furthermore, the DCA Director must now approve all travel by DCA special-funded agencies in advance, and a quarterly plan must be submitted to DCA outlining all travel-related activities.

In response to this cut, BRN announced at its September 24–25 meeting that the number of both Board and committee meetings will be reduced to five per year; out-of-state travel will be limited to exam-related committee meetings; only two out-of-state trips will be authorized for the chair of the Board yearly; and the use of rental cars by the Board and staff will be available only if no other ground transportation is practical. BRN has also put a proposal to combine the Education and Licensing Committees on its November agenda, and plans to reevaluate per diem payments for committee meetings.

Rulemaking Update. Due to budgetary constraints, BRN has discontinued its plans to amend section 1443.5(4), Title 16 of the CCR, which would have authorized RNs to assign nursing tasks according to a specific protocol to subordinates, including unlicensed personnel. *[12:2&3 CRLR 142]*

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 143–44:

SB 2044 (Boatwright) repeals existing law which provides for nursing education programs, and repeals and reenacts provisions governing certification of public health nurses, revising the requirements therefor.

Existing law provides that in specified circumstances, BRN may issue a temporary six-month license to practice professional nursing. This bill instead provides that the Board may issue a temporary license to practice professional nursing and may issue a temporary certificate to practice as a certified nurse midwife, certified nurse practitioner, or certified nurse anesthetist. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

AB 566 (Hunter), commencing July 1, 1993, prohibits any person from holding himself or herself out as a perfusionist, unless at the time of doing so the person has met certain education and examination requirements. This bill requires that persons who hold themselves out as perfusionists be graduates of a prescribed training program and produce satisfactory evidence of successful completion of the entire examination of the American Board of Cardiovascular Perfusion or the equivalent thereof if an equivalent is determined to be necessary by the Department of Health Services (DHS). Previous language authorizing BRN to issue certificates to qualified perfusionists was deleted from the final version of this bill—which was subsequently amended by AB 569 (Hunter) (*see infra*). This bill was signed by the Governor on July 24 (Chapter 343, Statutes of 1992).

AB 569 (Hunter) was substantially amended on June 8 and July 2 to address various scope of practice issues regarding RNs and physician assistants (*see supra* MAJOR PROJECTS). However, that language was entirely amended out on July

29 and replaced with language regarding perfusionists.

Under AB 566 (Hunter) (Chapter 343, Statutes of 1992) (*see supra*), which takes effect on January 1, 1993, in order to use the term "perfusionist," a person is required to complete certain continuing education requirements or the equivalent if an equivalent is determined as necessary by DHS. This bill amends AB 566 to instead require the Medical Board's Division of Allied Health Professions (DAHP) to perform the duties that were required to be performed by DHS. This bill also declares the intent of the legislature to reserve authority to DAHP to adopt examination, continuing education, and training standards, with appropriate consultation, if existing standards of the American Board of Cardiovascular Perfusion or the Accreditation Committee of the Committee on Allied Health Education and Accreditation of the American Medical Association prove inadequate after a trial period. This bill was signed by the Governor on September 27 (Chapter 1038, Statutes of 1992).

SB 1813 (Russell) is a follow-up bill to SB 1070 (Thompson) (Chapter 1180, Statutes of 1991). SB 1070 requires 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 BRN 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 certain infection control guidelines.

SB 1813 requires BRN to consult with the Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Vocational Nurse and Psychiatric Technician Examiners, and other agencies to encourage consistency in the implementation of this provision. Also, SB 1813 clarifies existing law to provide that BRN may discipline its licensees for the knowing failure to protect patients by failing to follow BRN's infection control guidelines. This bill was signed by the Governor on September 30 (Chapter 1350, Statutes of 1992).

AB 3035 (Polanco). Existing law establishes a privilege which applies to communications between a psychotherapist, as defined, and his/her patient. This bill includes within the definition of psychotherapist for purposes of this provision a person licensed as an RN pursuant to the Nursing Practice Act, who possesses a master's degree in psychiatric mental health nursing. This bill was signed by the Governor on July 22 (Chapter 308, Statutes of 1992).

AB 2743 (Frazee) revises various license and application requirements relative to the practice of registered nursing and allows BRN to implement a "cost recovery system," under which it may request an administrative law judge to order a disciplined licensee to reimburse the Board for its investigative and other enforcement costs related to the disciplinary proceeding. This bill was signed by the Governor on September 30 (Chapter 1289, Statutes of 1992).

AB 2849 (Hunter) permits a physician to delegate prescribed duties to a nurse practitioner who is not an employee of the facility, as permitted by federal law and regulations, for Medicare-reimbursed health care services provided in long-term health care facilities; requires that those responsibilities delegated to a nurse practitioner be performed under the supervision of the physician under a standardized procedure among the physician, the nurse practitioner, and the facility; and, as permitted by federal law and regulations, authorizes a nurse practitioner to perform prescribed tasks otherwise required of a physician for any Medi-Cal-reimbursed health care services provided in a long-term health care facility. This bill was signed by the Governor on September 27 (Chapter 1048, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits RNs, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, 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 RN to assess additional charges for any clinical laboratory service that is not actually rendered by the RN 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).

AB 819 (Speier), pertaining to the referral by a physician of patients to laboratory services or facilities in which the physician has an ownership interest, died in committee.

RECENT MEETINGS

At its May 23–24 meeting, BRN announced that, beginning with the February 1993 examination, NCLEX-RN applicants must complete a new, two-step application process. BRN candidates must first submit an application and application fee to BRN. After BRN determines a candidate's eligibility to take the exam, the candidate will be mailed an examination application and instructions to send his/her fees directly to the NCLEX-RN vendor. This two-step process must be completed in order for a candidate to be eligible to take the NCLEX-RN. BRN is currently developing an education plan and materials to be distributed to educators, recruiters, and applicants regarding this direct application process.

Last April, Senator Dan Boatwright requested that BRN produce data on the status of all enforcement cases for the past three years. At BRN's May meeting, the Board reviewed its response to this request. Of the 670 cases handled during this time period, BRN reported that approximately 100 RN licenses are revoked or placed on probation annually; 90–95% of BRN's accusations result in action against a license; and over 150 RNs are referred to the Diversion Program annually, resulting in their immediate removal from the workplace and intensive monitoring for public safety. According to BRN, these statistics demonstrate that the Board places the highest priority on its enforcement program.

At its September 24–25 meeting, BRN approved minor modifications to its Rules of Order regarding nominations and elections, in light of the reduced number of Board meetings that will be held in 1993. After approval, BRN invited interested Board members to sign up for positions on the nominating committee; BRN planned to elect new officers at its November meeting.

FUTURE MEETINGS

February 4–5 in Los Angeles.
April 22–23 in Sacramento.
June 10–11 in San Diego.