



REGULATORY AGENCY ACTION

registration. The Program's initial registration fee is \$50; the renewal fee is \$50; and the registration fee for a branch office is \$25.

Members of the State Bar of California, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from registration.

An Administrator, appointed by the Governor and confirmed by the Senate, enforces the provisions of the Tax Preparer Act. Under the Act, the Administrator is supposed to be assisted by a nine-member State Tax Preparer Advisory Committee consisting of three registrants, three persons exempt from registration, and three public members. However, the last committee members' terms expired on December 31, 1988; no members have ever been appointed to replace them. Further, the Tax Preparer Advisory Committee will be eliminated as of January 1, 1993, due to ABX 66 (Vasconcellos) (Chapter 21X, Statutes of 1992), which also eliminated 46 other specified advisory boards (*see infra* LEGISLATION).

MAJOR PROJECTS

Fee Increase Approved. On July 15, the Office of Administrative Law approved the Program's proposed amendment to section 3230, Title 16 of the CCR. [12:2&3 CRLR 149] This amendment increases the registration renewal fee for tax preparers and tax interviewers from \$40 to \$50, and sets the branch office fee at \$25. This amendment became effective August 14.

LEGISLATION

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including the Tax Preparer Program, 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 also provides that the unlicensed performance of activities for which Tax Preparer Program registration is required may be classified as an infraction punishable by a fine not less than \$250 and not more than \$1,000. SB 2044 also provides that if, upon investigation, the Program has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed by the Program to offer or perform those services, the Program may issue a citation containing an order of correction which

requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

Existing law requires that, as a condition of the Program's acceptance of an assurance of voluntary compliance by a registrant accused of a disciplinary offense, a registrant must pay all investigative costs actually incurred in discovering the alleged violations, not to exceed \$500. Existing law requires a registered tax preparer to post a \$2,000 bond and provides that the total bond required for any single tax preparer and associated interviewers not exceed \$50,000; existing law also limits the registrant fees paid by a single tax preparer and associated tax interviewers to \$1,500 per calendar year. SB 2044 deletes the investigative costs requirement; increases the amount of the bond for a tax preparer to \$5,000 and sets the maximum total bond for a single tax preparer and associated tax interviewers at \$125,000; and removes the annual \$1,500 cap on registrant fees paid by a single tax preparer and associated tax interviewers. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

ABX 66 (Vasconcellos) abolishes 47 specified advisory boards, including the Program's Tax Preparer Advisory Committee. This bill, which takes effect on January 1, 1993, was signed by the Governor on September 28 (Chapter 21X, Statutes of 1992).

AB 683 (Moore), as amended April 1, would have established a Legal Access Pilot Program and Advisory Commission within the Tax Preparer Program to, among other things, register and regulate nonlawyers providing legal assistance (sometimes called "legal technicians" or "independent paralegals"). [11:4 CRLR 51, 211-12] This bill died in committee.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

*Executive Officer: Gary K. Hill
(916) 920-7662*

Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all veterinarians, veterinary hospitals, animal health facilities, and animal health technicians (AHTs). The Board evaluates applicants for veteri-

nary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California State Board Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, AHTs, and unregistered assistants have in administering animal health care. BEVM's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR). All veterinary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members, including two public members. The Board has eleven committees which focus on the following BEVM functions: continuing education, citations and fines, inspection program, legend drugs, minimum standards, examinations, administration, enforcement review, peer review, public relations, and legislation. The Board's Animal Health Technician Examining Committee (AHTEC) consists of the following political appointees: three licensed veterinarians, three AHTs, and two public members.

In late May, Assembly Speaker Willie Brown appointed Ellen O'Connor to fill a public member position on the Board; O'Connor also serves as a board member of the Yolo County Society for the Prevention of Cruelty to Animals. On June 24, the Senate Rules Committee reappointed Jean Guyer to serve as a public member on the Board; her term will end on June 1, 1996. On July 17, Governor Wilson appointed San Diego veterinarian Michael Clark to fill a DVM position on the Board; Clark owns and practices at San Diego Pet Hospital.

MAJOR PROJECTS

OAL Approves Regulatory Changes. On September 3, the Office of Administrative Law approved BEVM's amendments to sections 2014, 2015, 2015.1, 2024, 2031(a), 2070, and 2071, Title 16 of the CCR, which effect a number of regulatory revisions relating to the practice of veterinary medicine. [12:2&3 CRLR 150] Among other things, the amendments change an existing reference to the "written portion and practical portion" of the veterinary licensing exam to the "national examination and California state board exam," reflecting more accurate terminology for both exams;



change an exam score reference from "75%" to "a passing score determined by the Angoff criterion-referenced method of establishing the pass point"; eliminate a provision that requires an applicant to take and pass the California written exam before being admitted to the California practical exam; delete an existing reference to particular sections of the licensing exam for which an applicant may receive conditional credit if he/she has taken a similar exam in another state; and increase various BEVM fees.

Specifically, the fee amendments to section 2070 increase the application fee for the California State Board examination from \$100 to \$180, and the initial and renewal fees for veterinary premises from \$30 to \$50. Existing section 2071 provides that the fee for application for the AHT and radiology and radiation safety examination is \$35; the Board's amendments increase this fee to \$50 and delete the reference to the radiology and radiation safety examination. Other amendments to section 2071 delete the application fee for retaking the AHT and radiology and radiation safety examination.

CTU Rescores BEVM's Practical Examination. Following a request from the Board, the Department of Consumer Affairs' Central Testing Unit (CTU) reviewed BEVM's June California Practical Examination. CTU agreed with BEVM that 28 items were inappropriate and should be deleted; according to CTU, those items produced questionable statistics and the test contained numerous items that had not been previously used (that is, they lacked any previous item statistics). CTU contends that the deletions resulted in an improved test which is fairer to the examinees because it is more reliable; the modifications also improved the pass rate from 61.2% to 66%. Further, the improvement in reliability and pass rate suggests that the items deleted were in fact flawed, inappropriately difficult, or failed to discriminate inadequately prepared from adequately prepared candidates, either because they were too easy or because they forced many candidates to guess at the correct response.

Pet Store Vaccinations Update. At its May meeting, BEVM discussed potential problems concerning vaccination clinics which operate from inside pet stores. According to the Board, existing law governs mobile clinics and specifies that all premises where veterinary medicine is practiced shall be registered, but does not specifically address this setting. The Board noted that a veterinarian may not have exclusive control over the sanitary conditions or the administration of vac-

cines in a pet store setting. [12:2&3 CRLR 151] BEVM requested that Deputy Attorney General Diana Woodward Hagle research the issues involved and present recommendations to the Board at a future meeting.

In a related matter, BEVM Executive Officer Gary Hill contacted Petco on June 11 regarding a Petco advertisement that states: "LOW COST VACCINATIONS. Petco cares about your pet! That's why we offer low-cost vaccination clinics at nearly all of our 179 locations. Contact your nearest Petco to find out the dates and times." According to BEVM, Petco's advertisement violated various sections of the California Veterinary Practice Act, Business and Professions Code section 4800 *et seq.*, because both the administration of vaccinations to animals and the representation that Petco is administering vaccinations to animals constitute the practice of veterinary medicine; because Petco is not licensed to practice veterinary medicine, its advertisement as such is unlawful. BEVM ordered Petco to immediately cease and desist administering vaccinations to animals and disseminating advertising which states or implies that Petco is administering vaccinations to animals.

On June 18, Petco Advertising and Marketing Manager Laura Colling responded to BEVM's charge. According to Colling, Petco does not administer vaccinations to animals, but it contracts with a company—Pet Vaccine Services, Inc.—whose veterinarians perform vaccination services at Petco stores. Colling enclosed a copy of a modified Petco advertisement which indicates that the vaccinations are performed by Pet Vaccine Services.

Board Addresses Issues Regarding Drug Use in Animals. In July, the U.S. Department of Agriculture and the Food and Drug Administration (FDA) held their annual meeting to discuss issues regarding residues associated with drug use in animals; often, such residues ultimately enter the human food chain. BEVM submitted a report for that meeting addressing problems in this area and possible solutions. According to BEVM, the most noteworthy problems are not caused by the use of prescription drugs resulting in residues that enter the human food chain, but the use of over-the-counter drugs by owners without consulting their veterinarians. [12:2&3 CRLR 153] BEVM added that a Drug Task Force—consisting of industry members and private, federal, and state veterinarians—is currently at work in California attempting to eliminate drug residues in the human food chain.

In a related matter, two bills are currently pending in the U.S. Congress which would authorize veterinarians to prescribe extra-label drugs, *i.e.*, to use their professional judgment to prescribe an approved animal drug or a drug which has been approved for human use in a manner which is not in accordance with the specific labeling that has been approved for the drug. Currently, veterinarians often give animals drugs which have not been specifically approved by the FDA for that species, but which have proven safe in other species. Although the FDA has not historically enforced an existing prohibition on such activity, new FDA Commissioner Dr. David Kessler has announced the Administration's intent to do so.

In response, S. 2667 (Heflin) and H.R. 5297 (Stenholm) would amend the federal Food, Drug, and Cosmetic Act to clarify the application of the Act with respect to alternate uses of animal drugs and drugs intended for human use. Among other things, the bills would declare:

- that there are not approved animal drugs available to relieve pain and suffering or to treat every specific disease or condition found in each species of animal;

- that it is sometimes necessary for veterinarians to use an approved animal drug or approved drug intended for human use in a manner that is not in accordance with the label of the drug, if the health of an animal is immediately threatened and suffering or death would result from failure to provide effective treatment; and

- that veterinarians possess the professional training and medical judgment to administer drugs in a clinically-appropriate manner that benefits animals and safeguards the public health.

As such, the bills would permit veterinarians to use such an approved animal drug or an approved drug intended for human use, for therapeutic purposes in animals in a manner that is not specified on the label of the drug, if a valid veterinarian-client-patient relationship exists, and would permit the Secretary of Health and Human Services to establish conditions for such use as may be necessary to protect the public health. At this writing, S. 2667 is pending in the Senate Labor and Human Resources Committee and H.R. 5297 is pending in the House Energy and Commerce Committee.

BEVM Completes AHT/Unregistered Assistant Survey. In July, BEVM released the results of its AHT and Unregistered Assistant Survey, which was sent to all veterinary practices, AHT schools, and current AHTs. BEVM received approximately 765 responses to the survey, which requested each respon-



REGULATORY AGENCY ACTION

dent to specify—among other things—the size of his/her practice; the practice type; the number of registered AHTs in the practice; whether the practice had difficulty finding qualified AHTs for hire; how the AHTs in the practice qualified to sit for the AHT examination; how many unregistered assistants (URAs) are in the practice; whether the URAs are interested in going to school to become AHTs; whether the URAs would be willing to pursue AHT certification if the proposed five-year plan or a similar plan is adopted by AHTEC and BEVM; and the actual need now or in the future for an additional program to qualify more URAs in the animal health care field. BEVM's survey findings include the following:

—the primary reasons that practices have difficulty finding qualified AHTs for hire involve availability, salary, qualifications, and location;

—the primary reasons that URAs are not interested in going to school to become AHTs are family obligations, financial considerations, and a lack of interest; and

—70% of respondents perceive an actual need now or in the future for an additional program to qualify more URAs in the animal health care field.

The California Veterinary Medical Association (CVMA) recently completed its own survey of AHTs, URAs, and AHTs with lapsed certifications. CVMA's survey, which received 1,518 responses, yielded the following findings:

—the majority of AHTs responding to the survey qualified for the state exam through community college programs or private programs;

—81% of the respondents earn \$12 per hour or less;

—the aspects of the respondents' most recent jobs in the field which were the most gratifying include working with animals and utilizing one's skills;

—the aspects of the respondents' most recent jobs in the field which were the least gratifying include the salary benefits, professional recognition, and working conditions; and

—62% of the respondents favor creating a category to allow URAs with on-the-job training to sit for the AHT exam.

The Board was expected to discuss the results of these surveys at its October meeting.

Budget Reduction Plans. The 1992–93 Budget Bill, which was finally signed by Governor Wilson on September 2, requires special-funded agencies such as BEVM to reduce 1992–93 expenditures by 10% over 1991–92 expenditures, and to transfer that 10% to the state general

fund on June 30, 1993. BEVM has targeted several areas for budget cuts in response to the legislative mandate. The Board plans to reduce operating and equipment expenses, examination costs, and enforcement expenses by a total of \$92,500. AHTEC plans to eliminate \$14,100 in furniture and equipment costs, which fully covers its required 10% cut. BEVM was expected to review these budget reduction proposals at its October meeting.

■ LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 151–52:

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including BEVM, 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 also provides that the unlicensed performance of activities for which a BEVM license is required may be classified as an infraction punishable by a fine not less than \$250 and not more than \$1,000. SB 2044 also provides that if, upon investigation, BEVM has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by the Board to offer or perform those services, the Board may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

AB 3088 (O'Connell) would have enacted the Pet Overpopulation Reduction Act of 1992, and would have, among other things, provided that any person who owns, harbors, or keeps any dog or cat which has been adopted, purchased, or otherwise received from an animal control agency, society for the prevention of cruelty to animals shelter, humane society shelter, or comparable shelter, except any dog or cat returned to its rightful owner after being sheltered as lost or as a stray, shall cause the animal to be neutered or spayed by a licensed veterinarian within sixty days after receipt of the animal. This

bill was vetoed by the Governor on August 31.

AB 3245 (Statham) repeals existing law which generally regulates the importation into this state of horses, cattle, sheep, and goats for other than exhibition or theatrical purposes; requires that a certificate of health from the state of origin issued by an accredited veterinarian be mailed to the California Department of Food and Agriculture (CDFA) stating that a horse or other equidae to be imported into the state is free from evidence of any communicable disease; requires dairy cattle, breeding bulls, and dairy goats that are brought into this state to be accompanied by a certificate of health or a signed statement stating that the animals are free of communicable disease; and specifies that any person who desires to import any buck sheep, sheep, or goats into this state is required to notify CDFA of specified matters before the importation is made. This bill was signed by the Governor on July 14 (Chapter 218, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits veterinarians, 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 veterinarian to assess additional charges for any clinical laboratory service that is not actually rendered by the veterinarian 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 663 (Maddy) raises the statutory ceilings on AHT fees for filing an examination application, biennial renewal, delinquency, and initial registration; and authorizes BEVM to adopt regulations for the waiver or refund of initial registration fees if the registration is issued less than 45 days before it will expire. Regarding veterinarians, this bill raises the maximum application fees for the national examination, the California state board examination, initial licensing, and biennial renewal, as well as the initial and annual renewal fees for registration of veterinary premises. Under previous versions of this bill, veterinarians would have been required to complete 50 hours of continuing education during each two-year period as



a condition of license renewal; that language was deleted. This bill was signed by the Governor on September 11 (Chapter 626, Statutes of 1992).

AB 1660 (Speier), which would have required a licensed veterinarian to be present during any rodeo sanctioned by the Professional Rodeo Cowboy Association or the International Professional Rodeo Association, died in committee.

■ LITIGATION

The unpublished decision of the Fourth District Court of Appeal in *Hall v. Kelley*, No. G009476 (Dec. 31, 1991), has become final. In that ruling, the appellate court affirmed the trial court's dismissal of Dr. Hall's lawsuit against BEVM for its alleged failure to provide her with an adequate setting in which to take its practical exam; Dr. Hall is dyslexic. [12:2&3 CRLR 152] Because Dr. Hall failed to timely file a petition for review with the California Supreme Court, the Fourth District's decision is now final.

■ FUTURE MEETINGS

To be announced.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Officer: Billie Haynes
(916) 445-0793/(916) 323-2165

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) 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 65,630 LVNs with active licenses, 27,262 LVNs with delinquent active licenses, and 10,539 with inactive licenses, for a total LVN population of 103,431. The Board's psych tech population includes 13,728 with active licenses and 5,159 with delinquent active licenses, for a total of 18,887 psych tech practitioners.

On July 14, Governor Wilson appointed Maryann Maloney to fill a public member position on the Board; Ms. Maloney is the legislative liaison for Saint Francis Hospital in Lynwood. Also on July 14, Governor Wilson appointed Carolyn Duncan to fill a psych tech position on the Board; Ms. Duncan is a psychiatric technician at Mt. San Antonio College in Walnut.

■ MAJOR PROJECTS

Proposed Regulatory Action on Processing Times for Psych Tech CE Provider Permits. On May 29, the Board closed the public comment period on its proposed amendments to section 2567, Chapter 25, Title 16 of the CCR, which 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 psych tech continuing education (CE) provider is complete or deficient and identify specific information which is required. Further, the proposed regulatory action would 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. [12:2&3 CRLR 154] The full Board has yet to vote on this proposal.

Psychiatric Technician Occupational Analysis. At its September 18 meeting, the Board heard an update from DCA's Central Testing Unit (CTU) on the occupational analysis which is being conducted of the psychiatric technician population to determine the validity of the California Psychiatric Technician Licensure Examination. Last spring, CTU interviewed 23 psych techs to identify categories of work, job tasks performed in each category, and the knowledge, skills, and abilities required to perform each task. [12:2&3 CRLR 154-55] CTU Manager Norman Hertz and Test Specialist Roberta Chin reported that CTU then prepared a draft questionnaire and is currently reviewing the items with Board staff to verify that the language used in the questionnaire is technically correct and appropriate. Although CTU originally

scheduled distribution of the questionnaire for August, the revisions currently in progress have required postponement of the questionnaire distribution until February 1993.

Computer Testing. Based on the recommendation of CTB MacMillan/McGraw-Hill, the Board's exam contractor for computerized psych tech exams, the Board has developed a practice test to field-test newly-developed questions. [12:2&3 CRLR 155] Almost 200 individuals took the practice test during the first phase of administration from April 27-May 1 at Mt. San Antonio College in Walnut and May 11-13 at Napa College in Napa. The second phase of administration began the week of July 27 at San Bernardino Valley College and was scheduled to continue during the week of November 2 at Santa Rosa Junior College. In order to achieve its goal of testing 450 candidates, the Board plans to hold an additional session at Mt. San Antonio College in early December.

At its September 18 meeting, the Board heard a report from Executive Officer Billie Haynes on the National Council of State Boards of Nursing's (NCSBN) Delegate Assembly meeting in August. The Delegate Assembly proceeded with its plan to convert from paper-and-pencil testing to computer adaptive testing (CAT) for all LVN and registered nurse candidates, and selected Educational Testing Services as the CAT vendor.

■ LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 155-56:

SB 1813 (Russell) 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 provides 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