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(CE), but decided that its budget would not accommodate the start-up costs of getting CE legislation passed and hiring more staff to enforce the legislation. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 96 for background information.) At its November meeting, SPAEC reaffirmed its commitment to the implementation of CE. The Committee further decided that it would try to work around budgetary problems and put the issue at the top of the agenda for its April meeting.

FUTURE MEETINGS:

April 18 in Long Beach.
June 28 in San Francisco.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

*Executive Officer: Ray F. Nikkel
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Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Division 31, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

MAJOR PROJECTS:

Residential Care Facility Administrator Certification Study. The Department of Social Services' (DSS) advisory committee had until December 1 to release its study on which state agency is best suited to implement the certification process for administrators of residential care facilities for the elderly (RCFE). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 96 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 112 for background information.) DSS failed to release its study by that deadline; it now expects to release its report in early 1991.

RECENT MEETINGS:

At BENHA's October 26 meeting, Executive Officer Ray Nikkel introduced proposed continuing education guidelines pursuant to AB 1834 (Connelly) (Chapter 816, Statutes of 1987), which requires NHAs to complete 25% of their continuing education (CE) requirement in the areas of "Aging and Patient Care." The proposed guidelines specify types of CE courses BENHA will accept to fulfill this requirement.

Courses in aging relate to the biological, mental, and sociological aspects of aging. Examples of acceptable courses include those which address the special dietary needs of the elderly; the psychological implications of institutionalization; and protecting the elderly in a restraint-free environment. Acceptable courses in the patient care category must directly relate to patient care, including the physical aspects of care, such as treatment of pressure ulcers; the psychological aspects of care, such as identifying and treating elderly depression; and the sociological aspects of care, such as activities designed to improve socialization skills. BENHA also approves courses focusing on patients' rights in skilled nursing facilities.

At BENHA's December 11 meeting, the Board approved a letter to be sent to preceptors, thanking them for participating in BENHA's administrator-in-training (AIT) program. The letters will be sent upon completion of each preceptor's field work with an AIT. All AITs are required to complete a 1,000-hour internship prior to taking the NHA exam. Any skilled nursing facility may participate in the program, although BENHA will not approve an AIT sponsorship when the facility has had licensing problems. BENHA holds one-day preceptor training sessions every two months. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 112 for background information.)

Also at the December 11 meeting, Executive Officer Ray Nikkel presented

a report on the November meeting of the National Association of Boards of Examiners for Nursing Home Administrators (NAB). Of major concern to NAB members is U.S. Representative Henry Waxman's (D-California) addition of a section in the federal budget bill which proposes to remove federal requirements for individual state boards regulating nursing home administrators. Mr. Nikkel opined that Representative Waxman's action may be prompted by the belief that when the Health Care Financing Administration (HCFA) releases its national nursing home administrator standards, HCFA or the U.S. Department of Health and Human Services (DHHS) will enforce those standards on a national basis; therefore, state boards may be deemed duplicative and unnecessary. Mr. Nikkel expressed concern as to whether a federal agency will be able to effectively administer state exams and oversee the qualification process of administrators.

FUTURE MEETINGS:

To be announced.

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 malfeasant 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. Six are licensed optometrists and three are members of the community at large. Two of the Board's positions which are reserved for licensed optometrists are presently vacant.

MAJOR PROJECTS:

Board Responds to Critical Management Study. The Board recently commissioned Ernst & Young to perform a management, procedural, and workload measurement study of the Board's operations. The study, which was presented to the Board on September 4, cites chronic understaffing and the cyclical nature of examination activities as sources of major problems for the Board. At the Board's November 29 meeting, Board



President Stephen Chun, O.D., paraphrased the study's findings as follows:

- Public health and safety are not being adequately protected, because there is a substantial backlog in processing consumer complaints.

- Laws, regulations, and legislative mandates are not currently being met due to ongoing constraints.

- Consumer service is not being provided in an adequate manner.

- Service to licensed optometrists is insufficient.

- Pre-license services are severely lacking, especially services to assist persons who have graduated from optometry programs in foreign countries in passing the California optometry examination.

- Successful candidates for licensure are being denied the right to practice their profession for unreasonable periods of time.

The study points to the Board's inability to offer the California exam twice a year, despite a legislative directive to do so, as an example of the Board's problems. The study was especially critical of the Board's enforcement system, and noted that this Board—which regulates 7,900 licensed optometrists and 600 optometric corporations—has only one personal computer at its offices and does not utilize the Department of Consumer Affairs' Enforcement Processing System. According to Ernst & Young, "[s]tatistics are maintained manually on an ad hoc basis, and the manual case tracking system is unreliable and inefficient." The Board has a total of three full-time and one half-time positions, plus a .9 temporary help position; its staffing level has not been augmented since fiscal year 1978-79.

In response to the report's findings and recommendations, the Board submitted a budget change proposal (BCP) to the Department of Finance (DOF), requesting funds to double the size of its staff and for new telephone and computer equipment. Executive Officer Karen Ollinger expects that DOF will grant the Board a staff increase of 1.5 personnel years, as well as the funds for new telephone equipment and computers.

Foreign Graduates. On December 14, the Board's Credentials Committee held a public meeting to discuss implementation of a refresher course for graduates of foreign optometric schools. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 97; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 113; Vol. 10, No. 1 (Winter 1990) pp. 87-88; and Vol. 9, No. 3 (Summer 1989) pp. 64-65 for extensive background information.) The course will be

administered by the UCLA Health Sciences Extension Program and is expected to be offered in the Los Angeles area as early as fall 1991. At the meeting, the Committee and representatives from Senator David Roberti's office discussed the goals, objectives, and timetables for planning and implementation of the program.

Regulatory Changes. The Board has undertaken a comprehensive review of its current regulations and, at its November 29 meeting, referred several proposed regulatory amendments to legal counsel for preparation of preliminary drafts.

For example, the Board discussed proposed section 1536, still in draft form, which would clarify continuing education (CE) requirements. The proposed regulation sets forth standards for the courses; lists the institutions which are qualified to administer CE courses; and eliminates CE credit for home study. However, the Board decided to delay any action on this proposed regulation until an audit is completed on the need for clarification of current CE requirements.

Public member Julia Preisig suggested review of current section 1535(a), which requires the passage of the National Board Examination in Optometry (NBEO) prior to taking the California exam. Board member Pamela Miller suggested that current regulations create unnecessary delays for candidates for relicensure and suggested that the order in which the exams are taken should not matter. Currently, the NBEO is offered twice per year, and the California exam is offered only once per year. This item was referred to the Regulations Committee for review and recommendation.

LEGISLATION:

Anticipated Legislation. At its November 29 meeting, the Board suggested that legislation is needed to authorize the Board to increase its examination and license fees to cover the costs of these operations. The Board also discussed the need for legislation requiring the retention of optometric records, in order to assist in its enforcement of standards of practice. The Board's legislative committee recommended a seven- to ten-year requirement for retention of records; however, the Board tabled this topic after it was unable to reach a consensus on the need for this legislation.

LITIGATION:

The Federal Trade Commission (FTC) has filed a petition for rehearing in *California State Board of Optometry*

v. Federal Trade Commission, 910 F.2d 976 (D.C. Cir. 1990), which struck down the FTC's "Eyeglasses II" rule on jurisdictional grounds. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 97-98 and Vol. 10, No. 1 (Winter 1990) pp. 88-89 for extensive background information.) On October 23, the U.S. Court of Appeals for the District of Columbia Circuit asked the parties for additional briefing on the application of the *Parker v. Brown* doctrine to those Board actions which limit corporate optometry. The *Parker* doctrine exempts states from federal antitrust scrutiny under certain circumstances; therefore, a state action may be valid even though it is anticompetitive.

At stake in this litigation is the Board's power to limit the practice of corporate optometry. Specifically at issue is the Board's authority to establish restrictions in the following categories: (1) limitations on the number of branch offices that optometrists may own or operate; (2) prohibitions on the practice of optometry in commercial locations, such as shopping malls; (3) prohibitions on optometrists' use of trade names; and (4) prohibitions on employer-employee or other affiliations between optometrists and persons who are not optometrists—these restrictions effectively prevent optometrists from working for corporations such as drug stores, department stores, and optical chains. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 71; Vol. 8, No. 1 (Winter 1988) pp. 67-68; and Vol. 5, No. 4 (Fall 1985) p. 1 for extensive background information on "Eyeglasses II.")

RECENT MEETINGS:

At its November 29 meeting, the Board elected its officers for 1991: Stephen Chun was reelected President; Thomas Nagy was reelected Vice-President; and public member Julia Preisig was elected Secretary.

Executive Officer Karen Ollinger presented a status update on the Board's conversion to a cyclical license renewal system based on the licensee's birth month, a change scheduled to begin in January 1991. The Board made this change to spread the administrative burden of license renewal activities over a twelve-month period.

The Board's legal counsel attempted to clarify the legality of the practice of optometry in rest homes, stating that although an optometrist may not carry on the practice of optometry in a rest home, an infrequent visit (once or twice) to a patient at such a facility is not a violation of applicable law or regulations. Counsel suggested the need for regulations to define the scope of "temporary



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practice" permitted by Business and Professions Code section 3076. Board member Mel Santos suggested that regulations be drafted creating an exception for the treatment of patients who are physically unable to travel to the optometrist's office. Several optometrists in the audience expressed their concern that the current Board position brands as illegal the continuous practice of optometry outside the typical office setting (such as in rest homes or in hospitals). In a telephone interview, Executive Officer Karen Ollinger said that the Board is reluctant to create exceptions which allow the practice of optometry outside the office setting. According to Ms. Ollinger, because of understaffing, the Board is unable to effectively enforce abuses under current law, and could not possibly regulate the activities of optometrists in additional settings. The Board referred the issue to its Regulation Committee to discuss the creation of regulations defining the term "temporary practice."

FUTURE MEETINGS:

May 22-23 in San Diego.

BOARD OF PHARMACY

Executive Officer: Patricia Harris
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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:

Investigation of Revenue Enhancement Programs Between Physicians and Home IV Providers. The Board postponed the November 27 meeting of its special committee investigating options for addressing pharmacist concerns over fee arrangements between physicians and home infusion companies. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 98-99 for detailed background information.) The committee was scheduled to meet in January to discuss its findings.

In a related issue, Attorney General Opinion No. 90-304, issued in October 1990, concluded that similar financial schemes between radiologists and physicians would violate the "safe harbor" provisions of Business and Professions Code section 650. Specifically, where a group of radiologists contracts with physicians to provide imaging services for the patients of the physicians, and the agreement provides that (1) the group will charge each patient a fee for the services; (2) the fees collected will be transmitted to the physicians; (3) the physicians will pay stipulated amounts to the group for the services; and (4) the total amounts paid by the physicians will be independent of but increase proportionately less than the total fees collected from the patients, performance of the agreement would violate section 650. The Attorney General's opinion may provide some guidance for the Board in determining whether similar financial schemes between physicians and home infusion companies violate section 650.

Pharmacy Shortage. At the request of the California Retailers Association, the Board is studying the feasibility of implementing the National Association of Boards of Pharmacy Licensure Exam (NABPLEX) for licensing California pharmacists. Use of the exam would enable the Board to consider granting license reciprocity to pharmacists licensed in other states. At the Board's October 3 meeting, the Board's consultant estimated that implementation of the new exam would take over two years and would cost between \$17,000 and \$27,000 to implement. At its January meeting, the Board was scheduled to consider whether its staff should proceed further with evaluating the exam for use in California. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 99 for background information.)

Revocation of Licenses for Nonpayment of Renewal Fees. The Board recently announced that, pursuant to Business and Professions Code section 4411, it will revoke the licenses of all pharmacists who have failed to renew their licenses since 1988, unless disci-

plinary charges are pending. Because the procedures for reinstating a license are more stringent when the license has been revoked for disciplinary reasons, in cases where disciplinary charges are outstanding, the Board will pursue administrative proceedings on the charges.

Furnishing of Prescription Drugs by Emergency Room Physicians. In January 1990, in response to an increasing number of inquiries, the Board adopted a policy statement regarding the dispensing of prescription drugs by emergency room physicians. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 115 for background information.) According to the Board, if medication is needed at a time other than the hospital pharmacy's operating hours, the emergency room physician may write a prescription and dispense up to three doses of the medication from the emergency room's stock, until pharmacy services become available. The Board claims it is authorized to issue such a policy statement under Business and Professions Code section 4050, which gives the Board authority over dispensing drugs, and section 4051, which authorizes the Board to issue statements regarding conduct guidelines to prescribers, including physicians and surgeons.

In response to a request from the California Medical Association, which contends that the Board has no authority to regulate the activities of physicians and that physicians are authorized to personally furnish patients with drugs as are necessary for treatment, the Board revised its policy statement. Conceding that all available pharmacies may be closed during a three-day weekend and acknowledging that the three-dose limit was an arbitrary standard with no specific foundation or necessity, the Board revised its policy to allow an emergency room physician to dispense up to a 72-hour supply from the emergency room's stock.

Proposed Regulatory Change Regarding Continuing Education Advertising. Existing section 1732.3(d), Division 17, Title 16 of the CCR, requires a recognized continuing education provider's advertisements for accredited coursework to indicate the course's number of hours, the provider's number, the name of the accrediting agency, and the date of expiration. The section also directs that this information be provided by a specifically worded statement that must appear in any continuing education course advertisement.

The Board's proposed amendment to section 1732.3(d) would retain the requirement that all continuing education advertisements contain specific