



1990) p. 109 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 128 for background information on this case.) Following a February 1987 administrative hearing, the Board revoked Dr. Ho's license and imposed a \$5,000 fine. In Dr. Ho's subsequent appeals, both the Los Angeles County Superior Court and the Second District Court of Appeal upheld the Board's decision.

At the Board's November 30 meeting, Dr. Ho appeared before the Board and an administrative law judge (ALJ) in a hearing on Dr. Ho's petition for the reinstatement of his license. Business and Professions Code section 4887 and Government Code section 11522 state that a petitioner has the burden of demonstrating that he/she has the necessary and current qualifications and skills to safely engage in the practice of veterinary medicine within the scope of current law and accepted standards of practice. During this hearing, Dr. Ho testified and offered evidence in an attempt to establish his rehabilitation as well as his qualifications and skills to practice veterinary medicine. After the hearing, the Board met in closed session and reached a decision regarding Dr. Ho's reinstatement petition; the Board's decision will not become public until legal counsel drafts the order and serves it on Dr. Ho.

In *Hall v. Kelley*, Linda Hall, a dyslexic, sued BEVM for its alleged failure to provide an adequate setting for her to take the California practical exam. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 84-85 and Vol. 8, No. 4 (Fall 1988) p. 74 for detailed background information.) In April 1990, the Orange County Superior Court denied Ms. Hall's claim for relief. Subsequently, Ms. Hall's attorney missed the 60-day deadline for filing a notice of appeal. However, Ms. Hall's attorney filed a motion for an extension of time for filing the notice with the Fourth District Court of Appeal; the court has not yet rendered its decision on this motion.

RECENT MEETINGS:

At the October 19 meeting, Board staff reported that during the first six months of 1990, the Board received 186 complaints against veterinarians. Members of the public made 156 of these complaints; members of the profession filed 14; and the remaining complaints were made by other sources. Board staff informally handled 63 of the complaints in-house; 96 of the complaints were turned over for formal investigation by BEVM staff; and 27 complaints were turned over for formal investigation by DCA's Division of Investigation.

During this six-month period, 203 complaints were closed: 123 of the closed complaints were unactionable; 3 complaints were closed via settlement; and 77 complaints were closed through admonition letters.

During the same period, 238 clinics were inspected and 331 notices of violation were issued. Disciplinary actions for these violations included 15 citations, 77 violation letters, 16 license probations, 1 license suspension, and 2 criminal actions.

Also during this period, the Attorney General's Office filed 5 accusations.

Finally, Maureen Whitmore, BEVM's Drug and Alcohol Diversion Program Manager, reported that the program received and accepted one applicant in October 1990. Additionally, Ms. Whitmore reported that two participants completed the program in October.

FUTURE MEETINGS:

July 11-12 in Sacramento.

September 12-13 in Sacramento.

November 14-15 in Sacramento.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

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

The Board consists of five public members, three LVNs, two psych techs, and one LVN 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 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 licenses 65,269 LVNs with active licenses, 32,352 LVNs with delinquent active licenses, and 11,412 with inactive licenses, for a total LVN popula-

tion of 109,033. The Board's psych tech population includes 13,596 with active licenses and 4,487 with delinquent active licenses, for a total of 18,083 psych tech practitioners.

MAJOR PROJECTS:

Permit Reform Act Regulations. At its January 18 meeting, the Board was scheduled to hold a regulatory hearing on the proposed adoption of new regulatory sections 2508 and 2567, to implement the Permit Reform Act of 1981 (Government Code section 15374 *et seq.*), which requires the Board to adopt regulations specifying processing times for considering and issuing permits. The proposed regulations would specify the maximum period of time in which the Board will notify an applicant that his/her application is complete or deficient, and what specific information is required if deficient; these periods range from 30 to 90 days. The proposed regulations would also specify the maximum period of time after the filing of a complete application in which the Board will notify an applicant of a permit decision; these periods range from 30 to 365 days. In addition, the proposed regulations would specify the Board's actual application processing time, based on its performance during the past two years; these periods range from 1 to 387 days.

Board Clarifies Licensees' Scope of Practice. At its November 16 meeting, the Board adopted the Education and Practice Committee's recommendations that the scope of practice of LVNs and psych techs be limited in the following ways:

- LVNs may not withdraw blood from central lines or measure central venous pressure, since LVNs do not receive the level of nursing education necessary to safely perform these procedures.

- LVNs may not administer intravenous medication via "piggyback," as no provision in the Vocational Nursing Practice Act permits LVNs to administer intravenous medications.

- Lavage procedures may be performed by an LVN only in an acute care setting and while a physician is available on the premises.

- LVNs may not prepare medications for administration by other health care professionals.

- LVNs may not administer local anesthesia by subcutaneous injection, because the basic curriculum in a vocational nursing program does not prepare licensees to perform this procedure.

- LVNs may not administer erythropoietin intravenously in a dialysis unit, as no provision in the Vocational Nursing



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Practice Act authorizes such a procedure.

-LVNs and psych techs may not practice under standardized procedures, because those procedures are designed for independent practitioners. Both LVNs and psych techs are dependent practitioners and practice under the direction of a registered nurse or a licensed physician. Both may practice under standing orders, if such orders are reviewed with the physician specified for the patient prior to implementation.

-Neither LVNs nor psych techs may perform deep endotracheal suctioning, since they do not receive the level of nursing education necessary to safely perform the procedure. LVNs and psych techs are permitted to perform endotracheal suctioning only to the level of the carina (point of bifurcation).

-It is not within the LVN's scope of practice to perform flexible sigmoidoscopy, as the basic training program for LVNs does not prepare them to perform invasive diagnostic procedures.

-LVNs may not perform bladder chemotherapy instillations, because this procedure is not considered basic nursing practice.

-Psych techs may not provide ventilator care, because they do not possess the level of nursing education necessary to safely perform this procedure.

The Education and Practice Committee formulated these recommendations at its October 11 and 12 meetings. The clarifications were based in part on data and contributions provided by the Board's Vocational Nurse and Psychiatric Technician Ad Hoc Committees, and were made either because the scope of the licensee's education does not provide the necessary instruction or because no existing legislation allows the licensee to perform these procedures.

Amendments to Curriculum Regulations. At its September 21 meetings, the Board reviewed draft language to amend sections 2533 and 2587, Division 25, Title 16 of the CCR, which currently set forth the required curricula for vocational nurse and psychiatric technician programs. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 110 for background information.) The draft amendments to section 2533 would change the vocational nursing curriculum to specifically require theory and concurrent clinical experience, and to add obstetrical nursing, pediatric nursing, gerontological nursing, rehabilitation nursing, and several other components to the required curriculum. The draft amendments to section 2587 would change the psychiatric technician curriculum to specifically require theory and concurrent clinical

experience, and to add gerontological nursing, specified courses in addictive behaviors and eating disorders, and several other components to the required curriculum. The Board was tentatively scheduled to hold a public hearing on the proposed changes at its March 12-13 meeting.

Intravenous Therapy by LVNs. At its November 16 meeting, the Board accepted the Education and Practice Committee's recommendation that it amend sections 2542, 2542.1, and 2542.3 of the Board's LVN regulations, to specify that intravenous therapy may include the administration of electrolytes, nutrients, and vitamins via secondary intravenous lines by intravenous therapy certified LVNs. The Board agreed to disseminate proposed language to vocational nursing program directors, educators, and ad hoc committee members. The Board also requested that written comments (including suggested changes with corresponding rationale) be made to the Board by December 3. The Board was scheduled to hold a public hearing on the proposed regulatory amendment on March 12.

Proposed Regulatory Language for Psych Tech Continuing Education. At its November 16 meeting, the Board accepted the Education and Practice Committee's proposed regulatory language for psych tech continuing education (CE) requirements, which would be added to Article 7, Division 25, Title 16 of the CCR. Proposed section 2592 would require that each licensee renewing a license under Business and Professions Code section 4544 shall submit proof of completion, during the preceding two years, of thirty hours of CE acceptable to the Board. This section would not apply to the first license renewal following the initial issuance of a license. Proposed section 2592.1 would define acceptable CE courses; require the Board to accept each hour of theory or course-related clinical experience as one hour of CE; and authorize the Board to accept CE courses approved by psychiatric technician or nursing licensing agencies or organizations of this or other states, or courses considered comparable by the Board. Proposed section 2592.2 would set forth criteria which must be met by CE providers applying for approval of a CE course; provide that the Board will issue approval to a CE provider for no more than a two-year period; and provide that approval may be withdrawn under specified conditions. In addition, proposed section 2592.3 would govern Board approval of course instructors; section 2592.5 would require completion certi-

ficates and reporting; and section 2592.6 would provide that a license will be placed on inactive status when the renewal fee is paid and CE requirements have not been met. To reactivate an inactive license, the licensee would need to submit proof of thirty hours of CE taken during the preceding two years. Finally, proposed section 2592.7 would allow for specified exemptions from the Board's CE requirements. The Board was scheduled to hold a public hearing on the proposed revisions on March 13.

In conjunction with the CE requirement, the Board may seek to convert the renewal of psychiatric technician licenses to a two-year cycle. Psych techs would then renew their licenses every other year rather than annually; the Board believes that a two-year renewal cycle would allow sufficient time for psych techs to fulfill their continuing education requirements, which will coincide with license renewal.

Computer Aided Testing. Since its implementation, a total of 838 candidates have been scheduled for the California Psychiatric Technician Computer Administered Testing Examination. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 110 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 129 for background information.) As of December 18, the passage rate for first-time examinees is 79.4%.

Discipline Statistics. During calendar year 1990, the Board received 206 complaints against LVNs and 84 complaints against psych techs. The Board filed 53 accusations against LVNs and 24 against psych techs; placed 28 LVNs and 10 psych techs on probation; and revoked the licenses of 18 LVNs and 5 psych techs.

New Policy for PT Candidates Challenged. At its September 21 meeting, the Board adopted a new policy allowing candidates who fail the psych tech exam the first time an opportunity to retake the exam a second time no less than one month after notification of the results from the first exam. If the candidate fails again, the candidate may take the exam as many times as desired, but not more than once every six months. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 110 for background information.) The Center for Public Interest Law (CPIL) has notified the Board of its belief that this policy is in fact a regulation, and thus must be adopted pursuant to Administrative Procedure Act (APA) rulemaking procedures.

Government Code section 11342(b) defines a "regulation" as "every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule,



regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the state agency." According to CPIL, the Board's new retake policy relates not only to the internal management of the Board, but it also affects people applying for licensure by the Board. Also, the policy implements, interprets, or makes specific the law administered by the Board. Thus, CPIL contends the policy is a regulation as defined by Government Code section 11342(b). Although Business and Professions Code section 4513 authorizes the Board to regulate the times and places of psychiatric technician examinations, it does not authorize the Board to establish rules affecting the eligibility of an applicant to retake an examination without participating in the rulemaking process mandated by the APA.

Rules Implementing AB 3306 Challenged. At its September 21 meeting, the Board adopted five policies as part of its implementation of AB 3306 (Lancaster), which increased the educational requirement for LVNs from tenth to twelfth grade or the equivalent. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 111 for background information.) The first of these policies states that any vocational nursing student with only a tenth grade education or equivalent who was enrolled in an accredited or approved vocational nursing program as of December 31, 1990 will not be required to obtain the twelfth grade education or its equivalent. CPIL has notified the Board of its belief that this policy is a regulation as defined in section 11342(b) of the Government Code, and thus must be adopted pursuant to APA rulemaking procedures.

The APA requires that every rule state its source of authority. CPIL is concerned that the Board lacks statutory authority to permit these students to avoid the new education requirement, as AB 3306 states that all applicants must meet the new education requirement and contains no "grandparent" clause exempting currently-enrolled students.

LEGISLATION:

Anticipated Legislation. At its November 16 meeting, the Board accepted the Education and Practice Committee's suggestions that the Board introduce legislation to authorize LVNs to obtain post-licensure certification in dialysis and in ventilator care. The Committee recommended that requirements of both measures should include a cur-

rent active LVN license and one year of nursing experience in a medical surgical unit in an acute care hospital within the three years prior to certification.

Also at its November 16 meeting, the Board accepted the Education and Practice Committee's suggestion that the Board introduce legislation authorizing psychiatric technicians to obtain post-licensure certification in blood withdrawal.

RECENT MEETINGS:

At the November 16 Board meeting, Doris Zylinski, Dean of Health Occupations at Napa Valley College, presented a "Comparative Study of Licensed Vocational Nurse Curriculum and Employer Requirements." Among other findings, the study noted that: (1) LVN programs should expand or at least maintain current enrollments, as the need for LVNs will increase in the future; (2) the greatest need for LVNs in the future will be in the areas of medical-surgical inpatient services, skilled nursing, rehabilitation units, outpatient services, and home care

settings; (3) schools, colleges, and agencies should work together to ensure that intravenous therapy and blood withdrawal courses are readily available to LVN graduates; (4) the LVN's scope of practice should be directly related to the license, not the type of facility in which the licensee works; and (5) model LVN curricula for the 1990s should, among other things, retain medical-surgical nursing emphasis; increase both theory and clinical education in gerontology; increase clinical experience in skilled nursing, rehabilitation units, and home care settings; increase theory and clinical education in managed care, team leading, leadership, and organizational skills; change pediatric clinical focus from acute inpatient to "sick child" outpatient; and define the role of the LVN in terms of the nursing process.

FUTURE MEETINGS:

May 9-10 in San Francisco.
September 12-13 in San Diego.
November 14-15 in Los Angeles.



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department established in 1955 (section 22 of Article XX, California Constitution). The Alcoholic Beverage Control Act, Business and Professions Code sections 23000 *et seq.*, vests the Department with the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC also has the exclusive authority to issue, deny, suspend, and revoke alcoholic beverage licenses. Approximately 68,000 retail licensees operate under this authority. ABC's regulations are codified in Divisions 1 and 1.1, Title 4 of the California Code of Regulations (CCR). ABC's decisions are appealable to the Alcoholic

Beverage Control Appeals Board. Further, ABC has the power to investigate violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in liquor industry trade publications such as the *Beverage Bulletin*.

The Director of ABC is appointed by, and serves at the pleasure of, the Governor. ABC divides the state into two divisions (northern and southern) with assistant directors in charge of each division. The state is further subdivided into 21 districts, with two districts maintaining branch offices.

ABC dispenses various types of licenses. "On-sale" refers to a license to sell alcoholic beverages which will be bought and consumed on the same premises. "Off-sale" means that the licensee sells alcoholic beverages which will not be consumed on the premises. Population-based quotas determine the number of general liquor licenses issued each year per county. No such state restrictions apply to beer and wine licenses.