



nursing home residents, seeking an injunction to compel the state's compliance with regulations and "interpretive guidelines" adopted by the federal government to implement the Act. On January 11, U.S. District Court Judge Edward J. Garcia issued a preliminary injunction giving DHS thirty days to comply with the federal nursing home reforms. The judge also ordered the state to better protect nursing home residents from harmful use of physical restraints and behavioral drugs. On February 25, Judge Garcia issued a written decision, ordering state officials to immediately enforce the reforms.

Because it contends the state has not implemented federal regulations, the federal government has withheld at least \$24 million from DHS. Thus, on February 26, DHS filed a lawsuit against the U.S. Department of Health and Human Services and the Health Care Financing Administration (HCFA), claiming that federal officials failed to enact workable regulations to implement the Nursing Home Reform Act, and that the funds were improperly withheld. DHS also claimed it would cost \$400-\$600 million to comply with the federal regulations. If California remains in noncompliance with federal regulations, the federal government may decertify California nursing homes and federal financial contributions toward nursing home care (to the tune of \$1 billion annually in Medicare/Medicaid reimbursements) might be cut off.

Governor Pete Wilson supports DHS' refusal to implement the federal regulations, arguing that implementation will result in millions of dollars spent on paperwork rather than improved patient care. As a United States Senator, Wilson supported the nursing home reforms; however, he objects to the manner in which health officials are interpreting the law. In February, Wilson wrote to President Bush, asking for his assistance in settling the issue, and claiming that the federal government was improperly attempting to mandate standards on the states. However, on March 7, the federal government announced that it was sending over 100 investigators into California nursing homes to determine the extent of noncompliance.

On March 12, as this issue went to press, California and federal officials announced that they had reached a general agreement on the enforcement of the federal regulations. The agreement specifies that the state will work with federal officials on devising guidelines for implementation of the federal reforms. However, the agreement was criticized by advocates for nursing home residents,

who stated that they would ask Judge Garcia to penalize state officials who failed to comply with his February 25 order requiring strict compliance.

**NAB Preparing Five-Year Study.** Every five years, the National Association of Boards of Examiners of Nursing Home Administrators (NAB) sends questionnaires to nursing home administrators in each state in order to update its information regarding the knowledge and skills necessary to function effectively as a nursing home administrator. NAB expects to release the results of its study in June. It will use the information to update nursing home administrator examinations for certification at the state level.

#### LEGISLATION:

**AB 1615 (Hannigan).** Existing law provides that an RCFE administrator, if other than the licensee of the facility, is required to successfully complete a prescribed certification program for licensees of those facilities. As introduced March 8, this bill would repeal that provision on January 1, 1993, and would instead require that only persons who have successfully completed an unspecified approved certification program shall be RCFE administrators, on and after that date. This bill is pending in the Assembly Human Services Committee.

#### RECENT MEETINGS:

On February 14, BENHA conducted a special meeting to appoint a temporary executive officer to perform Ray Nikkel's duties until he returns from duty in the Persian Gulf. The Board appointed Luann Job, previously BENHA's secretary.

#### FUTURE MEETINGS:

To be announced.

#### BOARD OF OPTOMETRY

*Executive Officer: Karen Ollinger*  
(916) 739-4131

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.

#### MAJOR PROJECTS:

**Board Implements Changes in Response to Critical Report.** Last year, the Board commissioned Ernst & Young to perform a management study of the Board's operations. The ensuing report found that chronic understaffing is a cause of major problems for the Board; determined that the Board's enforcement system is unreliable and inefficient; and criticized the Board's inability to offer the California examination twice per year, despite a legislative directive to do so. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 80-81 for background information.)

In response to the study, the Board submitted a budget change proposal to the Department of Finance, which subsequently approved a staff increase of 1.5 personnel years, as well as funding for a new automated phone system and additional computers. At the Board's February 11 meeting, Executive Officer Karen Ollinger reported that she had initiated the process to fill the new staff positions. Ollinger also reported that she had met with a representative of the company which will provide the Board's new telephone system, and that she was in the process of completing the paperwork for the new computer equipment (two personal computers, two terminals, and a printer).

**Foreign Graduates.** Pursuant to legislative mandate, the Board is assisting in the design of a refresher course for graduates of foreign optometric schools, which is expected to begin in September. The course, which will be offered through the UCLA Health Sciences Extension Program, will be funded by \$300,000 from the Board's reserve fund, despite the Board's desire to have the program funded through the state's General Fund. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 81; Vol. 10, No. 4 (Fall 1990) p. 97; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 113 for background information.) At the Board's February 11 meeting, Board President Stephen Chun noted that there may be conflict of interest problems with the Board's involvement in both the course administration and the testing of subsequent graduates.

Thirty students are expected to take this full-time, 18-month course; the students are predominantly from the Philippines. The course will cover the areas of clinical skills and basic clinical science, at an estimated cost of \$3,000 per student.



**Regulatory Changes.** The Board's proposed amendments to section 1502 of its regulations, which would delegate certain Board functions to the executive officer, was not approved by the Department of Consumer Affairs because Board staff failed to file a fiscal impact statement. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 114 for background information.) Executive Officer Karen Ollinger has withdrawn the proposed rulemaking and expects to resubmit the proposal along with the Board's next rulemaking package.

On January 18, Board legal counsel Steven Martini met with the Board's president and executive officer to sort through current proposals for changes in the Board's regulations. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 81 for background information.) The Board's regulations committee was scheduled to meet on April 10 in Sacramento to continue its comprehensive review of the Board's regulations.

#### LEGISLATION:

**AB 1124 (Frizzelle)**, as introduced March 5, would establish the right, duty, responsibility, and obligation of a person engaged in the practice of optometry to exercise professional judgment in the performance of his/her duties, including, but not limited to, scheduling, diagnosis, treatment within the scope of practice of optometry, and referral of patients. This bill would also prohibit a health care service plan, and a specialized health care service plan, that provides one or more optometric services, from interfering with the professional judgment of a person engaged in the practice of optometry pursuant to that plan. This bill is pending in the Assembly Health Committee.

**AB 1358 (Floyd)**, as introduced March 7, would specify that a registered optometrist who performs any act constituting the practice of optometry while employed by another optometrist, a physician, or any entity authorized by the laws of this state to employ an optometrist to perform acts constituting the practice of optometry is bound by and subject to the optometry statutes and regulations. This bill would also specify that the Board may suspend or revoke the certificate of registration of, or otherwise discipline, an optometrist who is employed as described above for any of the causes specified in the optometry statutes or regulations. This bill is pending in the Assembly Health Committee.

**SB 613 (Calderon)**. Existing law requires a registered optometrist who temporarily practices optometry outside or away from his/her regular place of practice to deliver to each patient there

fitted or supplied with glasses a specified receipt. As introduced March 4, this bill would instead require a registered optometrist to furnish to each patient there fitted or supplied with prescription lenses a specified receipt. This bill is pending in the Senate Business and Professions Committee.

**AB 1046 (Tucker)**. Existing law requires certain health practitioners, law enforcement officers, and other specified individuals to report any evidence of abuse of an elderly or dependent person. As introduced March 4, this bill would add optometrists to the definition of health practitioner for purposes of the reporting requirements. This bill is pending in the Assembly Human Services Committee.

#### LITIGATION:

On January 8, the U.S. Court of Appeals for the District of Columbia Circuit denied the Federal Trade Commission's (FTC) petition for rehearing in *California State Board of Optometry v. Federal Trade Commission*, 910 F.2d 976 (D.C. Cir. 1990). This ruling represents a far-reaching victory for the Board; the decision limits the FTC's oversight over anticompetitive activities engaged in or authorized by the Board. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 81; Vol. 10, No. 4 (Fall 1990) pp. 97-98; and Vol. 10, No. 1 (Winter 1990) pp. 88-89 for extensive background information.)

The court let stand its previous decision invalidating the FTC's "Eyeglasses II" rule, which attempted to remove state-imposed restrictions on corporate optometry. The FTC's petition for rehearing argued that the Commission may disallow those regulations issued by state and local governmental entities that lie outside of the "state action" scope of the *Parker v. Brown* exception. However, the court stated that the "Eyeglasses II" rule is "fundamentally flawed" because it is "explicitly directed at state action," in that its "primary focus is on 'state-imposed and state-enforced restrictions.'" The court suggested that the FTC may be able to accomplish some of its purposes without exceeding its rulemaking authority, such as initiating a new proceeding to challenge, within the limits of its proper authority, any practice that it believes to be unfair.

#### RECENT MEETINGS:

At its February 11 meeting in Sacramento, the Board welcomed two new members, optometrists Gene Calkins and Joe Dobbs, who were appointed by Governor Deukmejian. President Stephen Chun announced the committee

assignments for 1991; the Board's four committees are administration/personnel, enforcement, examination/licensing, and regulation/legislation. Legal counsel suggested that the Board limit the committees to two members if it wishes to avoid the public meeting requirement.

#### FUTURE MEETINGS:

August 22-23 in San Francisco.  
November 18-19 in Los Angeles.

#### 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.

At the Board's January 30 meeting, Board President Robert Toomajian introduced three new Board members: pharmacists Janeen McBride of Thousand Oaks and Raffi Simonian of San Diego, and public member Herbert Stoecklein of San Diego.

#### MAJOR PROJECTS:

**Senate Studies Decline of Neighborhood Pharmacies.** On January 14, the Senate Select Committee on Small Business Enterprises conducted a hearing entitled "The Decline of the Neighborhood Pharmacies: At What Cost?" The main concern of the Committee is the decline of the neighborhood pharmacy and its impact on the consumer's access to pharmaceutical services.

At the hearing, many reasons were suggested for the decline, including