



(also known as the "dog bite statute") fixes strict liability upon dog owners to those injured by their pets regardless of prior knowledge of viciousness, in California a person who voluntarily exposes himself to the obvious hazard of being bitten cannot recover, either in negligence or under the statute." The court also relied on the decision in *Nelson v. Hall*, 165 Cal. App. 3d 709, 211 Cal. Rptr. 668 (1985), which announced the "veterinarian's rule": dog bites during treatment are an occupational hazard which veterinarians and their assistants accept by undertaking their employment.

Dr. Cohen attempted to distinguish *Nelson*, arguing that McIntyre's concealment of Lobo's previous vicious behavior created a risk which Dr. Cohen did not impliedly undertake. In rejecting this argument, the court stated that McIntyre's "admitted nondisclosure did not expose Cohen to any unknown risk"; the hazard which Dr. Cohen impliedly assumed was the risk that the dog would bite him. Further, the court noted that this "danger was graphically communicated to Cohen prior to the attack when the dog snapped at him." The court concluded that McIntyre's silence did not change the risk which Dr. Cohen knowingly encountered, and affirmed the trial court's decision.

RECENT MEETINGS:

At its January 11 meeting, the Board elected Arthur Hazarabedian, DVM, as president and Herbert Oh, DVM, as vice-president for 1991.

At its March 15 meeting, BEVM discussed its cite and fine program, which was implemented in January 1989. According to the Board, there have been 32 cases to date, with a total of \$8,700 collected as fines.

Also at its March meeting, the Board discussed the possible conflict between its Animal Health Technician Examining Committee (AHTEC) and the newly-created Council for Private Postsecondary and Education (CPPVE), which was formed to oversee the educational accreditation of private vocational schools. AHTEC is expected to ask the state Department of Education to inform the Committee about its role and function, as well as CPPVE's.

Also at BEVM's March meeting, Dr. Hazarabedian outlined some future topics which the Board will be addressing, such as laypersons treating their own animals, which has resulted in excessive legend drugs entering the animal food chain. Dr. Hazarabedian opined that all drugs entering the animal food chain, even over-the-counter drugs, must be administered under the supervision of a

veterinarian. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 127 for background information on this issue.)

FUTURE MEETINGS:

July 11-12 in Sacramento.

September 19-20 in Sacramento.

November 14-15 in Sacramento.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

*Executive Officer: Billie Haynes
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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 65,062 LVNs with active licenses, 32,838 LVNs with delinquent active licenses, and 11,466 with inactive licenses, for a total LVN population of 109,366. The Board's psych tech population includes 13,649 with active licenses and 4,556 with delinquent active licenses, for a total of 18,205 psych tech practitioners.

MAJOR PROJECTS:

Permit Reform Act Regulations. At its January 18 meeting, the Board held a public hearing and adopted regulatory sections 2508 and 2567 to implement the Permit Reform Act of 1981, Government Code section 15374 *et seq.*, which requires the Board to specify processing times for considering and issuing permits. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 91 for background information.) The regulations 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 regulations 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 regulations specify the Board's actual application processing times, based on its performance during the past two years; these periods range from 1 to 387 days. These regulations are presently awaiting approval by the Office of Administrative Law.

Amendments to Curriculum Regulations. On March 12 and 13, the Board held public hearings on proposed revisions to sections 2533 and 2587, Division 25, Title 16 of the CCR, which set forth the required curricula for vocational nurse and psychiatric technician programs. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 92 and Vol. 10, No. 4 (Fall 1990) p. 110 for background information.) The proposed amendments to sections 2533 and 2587 would incorporate current language and trends that will include the critical components for the development of a sound vocational nursing or psychiatric technician program. The proposed regulations would specify that all curricular changes which alter the program philosophy, conceptual framework, content, or objectives must be approved by the Board prior to implementation. Following the public hearings, the Board decided to postpone further action on these proposals until September.

Proposed Regulatory Action on Psych Tech Continuing Education. Existing law permits the Board to establish a continuing education (CE) program with specific hours, content, and procedures as a requirement for psych tech license renewal. On March 13, the Board held a public hearing on proposed regulatory sections 2592-2592.7, which would specify psych tech CE requirements. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) Due to the large number of public comments received, the Board postponed further action on these regulatory changes until September.

Proposed Regulatory Action on Accreditation Procedures. On March 12 and 13, the Board held public hearings on numerous proposed amendments to its regulations concerning the accreditation of LVN and psych tech education and training programs. First, the Board proposed to amend sections 2526 and 2581, to specify the written documentation



which must be submitted to the Board by the facility's director in connection with an application for accreditation. Criteria for accreditation would be expanded to call for specification of evaluation methodologies for curriculum, clinical facilities, and student progress. Specific Board approval would be required for commencement of the first class of a new program. In addition, a new program would be prohibited from commencing any more classes pending Board approval. The Board also proposed revisions to sections 2527(c) and 2582, which would make any material misrepresentation of fact in any report required by the Board cause for revocation of accreditation.

Section 2529 of the Board's regulations currently specifies the minimum qualifications for assistant directors of an accredited school. The Board proposed to amend this section to require an assistant director to have received instruction in administration. Sections 2529 and 2584 specify the minimum qualification of RN and LVN instructors, RN and psych tech directors, and assistant directors and instructors, as including possession of a bachelor's degree or teaching credential. Proposed amendments to these sections would specify that a qualifying bachelor's degree must be in a health-related field. The proposed revisions would specify that, in lieu of the degree or teaching credential, the instructor must have completed, within the last five years, at least one year of full-time teaching in a state-accredited school of registered nursing, vocational nursing, or psychiatric technician training, or have met community college or state university teaching requirements.

The Board also proposed to amend sections 2530 and 2585, which specify the general requirements for accredited schools. The proposed regulations would add a requirement that these schools have sufficient faculty, clinical facilities, library, staff, support services, physical space, and equipment to meet program objectives; the revisions would also specify that only one teacher assistant may be assigned to each instructor.

Section 2530 requires LVN schools to have on file proof of each student's completion of tenth grade or the equivalent. The Board's proposed revision to section 2530 would require proof of completion of twelfth grade or the equivalent. Section 2530 also provides that all proposed program changes must be approved in advance; the Board's proposed amendment would specify that curricular changes which alter the philosophy, conceptual framework, content, or objec-

tives must be approved in advance by the Board.

Due to the large number of public comments received at the March 12-13 hearings, the Board decided to postpone further action on these amendments until September.

Intravenous Therapy by LVNs. Existing regulations specify that LVNs who are intravenous therapy certified are permitted to start and superimpose intravenous fluids into a primary line. On March 12, the Board held a public hearing on proposed amendments to sections 2542, 2542.1, and 2542.3, to expand the LVN scope of practice to allow LVNs who are intravenous therapy certified to start and superimpose intravenous fluids via secondary infusion lines. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) The Board also proposed to amend sections 2547, 2547.1, and 2547.3, to expand the LVN scope of practice to allow LVNs who are intravenous therapy and blood withdrawal certified to start and superimpose intravenous fluids via secondary infusion lines.

The Board disseminated its proposed language to vocational nursing program directors, educators, and ad hoc committee members. Following the March 12 hearing, the Board decided to postpone further action until September.

Computer-Aided Testing. Since its implementation, a total of 937 candidates have been scheduled for the California Psychiatric Technician Computer Administered Testing Examination. As of February 19, the passage rate for the first-time examinees was 78.3%. At the Board's January 18 meeting, Assistant Executive Officer Marina Okimoto reported that the testing corporation developed alternative test methodologies and reconfigured the test programs to implement the Board's new retake policy. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 92-93 and Vol. 10, No. 4 (Fall 1990) p. 110 for background information.) She stated that the retake examination was successfully implemented on December 10 at two testing centers.

1990 Accomplishments. At the Board's January 18 meeting, Executive Officer Billie Haynes reported on the Board's 1990 accomplishments and activities, which included the following: implementation of computer-administered testing for psychiatric technician licensure in the Los Angeles and Sacramento testing centers; obtaining approval for a staff services manager position for the psych tech program; and securing passage of AB 4349 (Filante), which made numerous changes to vocational nursing fees.

Board Visits Correctional Facilities.

In late 1990, Board members visited two correctional facilities to examine the role of medical technical assistants (MTA). At its January 18 meeting, the Board agreed to visit more facilities to gain a better perspective of the MTA/LVN role, and how it differs among facilities, prior to meeting with key officials from the Department of Corrections and the California Youth Authority. The Board also decided to recognize the contribution of the participating MTAs by sending each a certificate of appreciation.

Discipline Statistics. During January, the Board received 26 complaints against LVNs and 13 against psych techs. The Board filed twelve accusations against LVNs and five against psych techs; placed one LVN and one psych tech on probation; and revoked the licenses of six LVNs.

LEGISLATION:

AB 2116 (Hunter). Under existing law, the Department of Corrections and the Department of the Youth Authority are prohibited from appointing a person as a medical technical assistant unless the person is an LVN, RN, or has certain prescribed experience in the medical corps of the armed forces of the United States or the United States Public Health Service. These departments are authorized only to hire persons who are eligible for licensure and, as a condition of employment, must require that those persons obtain a license as a vocational nurse within six months of employment. As introduced March 8, this bill would require the departments to require those persons to obtain a license as a vocational nurse within twelve, as opposed to six months of employment. This bill is pending in the Assembly Health Committee.

RECENT MEETINGS:

At the Board's January 18 meeting, Executive Officer Billie Hayes reported that the Board had received a letter from Brigadier General Clara L. Adams-Ender, Department of the Army, requesting special consideration for licensees serving in the Middle East in support of Operation Desert Shield. Specifically, she requested that: (1) any late or penalty fees for delayed filing for relicensure, registration, or recertification be waived for LVNs deployed to the Middle East; and (2) any licensee requiring continuing education credits for relicensure be allowed six months from the date of return to his/her permanent duty station to comply with these requirements. Brigadier General Adams-Ender stated that deployed nurses would furnish proof



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of duty in the Middle East in support of the military operation when they submit their requests for relicensure. Board legal counsel Bob Miller stated that Business and Professions Code section 114.5 addresses licenses or registrations which expire during a war. Also, Business and Professions Code section 2892.5(d) allows the Board to waive continuing education requirements for these individuals. He stated that these provisions would allow the Board to comply with Brigadier General Adams-Ender's request. The Board voted to implement the above provisions of the Business and Professions Code for the licensees serving in the Middle East.

At the January 18 Board meeting, Agnes Fortney, executive director of the California Licensed Vocational Nurses Association (CLVNA), made a presentation on the need for the expansion of the scope of practice for LVNs. Ms. Fortney discussed several issues of concern to

CLVNA, including the pilot project to permit emergency medical technicians-paramedics to work in hospital emergency rooms; the pilot project to permit pharmacy assistants to administer medication to patients in acute care hospitals; the pilot project which would license geriatric technicians; the proposed classification of registered care technologists; and expansion of the LVN scope of practice to include starting and superimposing intravenous medications. The report was noted by the Board.

Also in January, Kathleen Barr was reelected President and Charles Bennett was elected Vice-President of the Board. Board staff also reported that three new employees have been hired since November 1990; recruitment is under way to fill the remaining two staff vacancies.

FUTURE MEETINGS:

September 12-13 in San Diego.

November 14-15 in Los Angeles.

alcoholic beverages (*see infra* LEGISLATION). The so-called "booze tax bills" resemble Propositions 134 and 126, the failed November ballot initiatives. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 94; Vol. 10, No. 4 (Fall 1990) p. 112; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 130-31 for background information on the initiatives.) Meanwhile, citing the need for revenues to reduce the state's staggering deficit, Governor Wilson gave support to new alcohol taxes in his inaugural address. Wilson's plan for a balanced state budget includes \$190 million in proposed new alcohol taxes under terms similar to last year's industry-sponsored Proposition 126. The result appears to be executive and legislative agreement in principle to alcohol tax increases.

Wilson's proposal would channel new tax revenues to counties, which would assume a greater role in administering mental health programs. The proposed shift in mental health responsibility from state to county programs would reduce state spending while allowing larger county mental health budgets. Specifically, the proposal would increase state taxes on beer and wine to 20 cents per gallon. The tax per gallon is now four cents for beer, two cents for sweet wine, and one cent for dry wine. The Wilson proposal would also increase taxes on distilled spirits from \$2 per gallon to \$3.30 per gallon. This plan, expected to raise \$127 million from beer and wine and another \$63 million from distilled spirits, would take effect on July 1 at the start of the new fiscal year.

At this writing, Senator Marks, whose SB 21 initiated the flurry of tax increase measures during the current legislative session, has contacted the Wilson administration to establish common ground and encourage potential bipartisan support for a collaborative tax hike effort.

The proposed state tax increases constitute a second blow to the California alcohol industry, which recently experienced a federal tax hike aimed at reducing the federal budget deficit. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 94 for background information.)

State Alcohol Consumption Continues to Drop. In December, the California Council on Alcohol Problems (C-CAP) released statistics which indicate decreased alcohol consumption in the state. Figures for the 1989-90 fiscal year show one-year declines of 6.8% in per capita consumption of wine, 1.8% for hard liquor, and 1.2% for beer.

C-CAP, which released the figures as part of its annual year-end report on alcohol use, obtained the raw data for the



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.

MAJOR PROJECTS:

Legislators and Governor Propose Alcohol Tax Increases. Despite voter rejection of competing alcohol tax initiatives in November 1990, several California legislators have introduced bills designed to increase taxes on the sale of