purposes. This bill is pending on the Assembly floor.

RECENT MEETINGS:
At its May 18 meeting in Los Angeles, the Board decided it will no longer allow offsite licensing examinations for handicapped examinees as part of its Reasonable Accommodations for Psychology Licensing Examinations Policy adopted in May 1990. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 111 for background information.) The Board will continue to make "reasonable accommodations" for handicapped examinees onsite, including special seating arrangements and up to two extra hours to complete the examination.

FUTURE MEETINGS:

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE
Executive Officer: Carol Richards
(916) 920-6388

The Medical Board of California's Speech-Language Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech pathologists, three audiologists and three public members (one of whom is a physician).

The Committee registers speech pathology and audiology aides and examines applicants for licensure. The Committee hears all matters assigned to it by the Board, including, but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

SPAEC is authorized by the Speech Pathologists and Audiologists Licensure Act, Business and Professions Code section 2530 et seq.; its regulations are contained in Division 13.4, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:
Fee Increase Approved. On May 28, the Office of Administrative Law (OAL) approved SPAEC's proposed amendment to section 1399.186(b), Division 13.4, Title 16 of the CCR, which increases license renewal fees to $75, due to a potential budget deficit due to lack of revenue. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 93 for background information.)

Renewal fees are currently collected on a biennial basis, and all renewal fees are due on the same day. Due to cash flow problems resulting from this system, SPAEC, at its April 18 meeting, proposed a cyclical renewal plan which will allow SPAEC to collect renewal fees on a year-round basis. Renewal fees will be collected based on the licensee's birthdate; this will evenly distribute SPAEC's cash flow and workload throughout the year, and Committee members believe it will be easy for licensees to remember when to pay their renewal fees.

Exam Waiver Interviews. At its April 18 meeting, SPAEC split up into subcommittees to conduct interviews of candidates requesting to be licensed without taking the national exam, pursuant to regulatory section 1399.159. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 93; Vol. 11, No. 1 (Winter 1991) p. 79; and Vol. 10, No. 4 (Fall 1990) p. 96 for background information.) Following interviews of the applicants by the subcommittees, the subcommittees reported their recommendations to the full Committee, which then voted whether to grant each candidate's request for waiver.

Following the interviews, the Committee engaged in discussion regarding its procedure, and agreed to the following: (1) staff should not schedule a waiver interview until the applicant has provided SPAEC with all required documents in their official form (i.e., not copies); (2) each subcommittee should be comprised of one speech-language pathologist, one audiologist, and one public member whenever feasible; and (3) an applicant who is denied a waiver by a subcommittee may request to be reinterviewed by the entire Committee.

LEGISLATION:
SB 664 (Calderon), as introduced March 5, would prohibit speech pathologists and audiologists, 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, except as specified. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:
At SPAEC's April 18 meeting, Executive Officer Carol Richards reported on a "roundtable discussion" held by the Department of Consumer Affairs (DCA) on continuing education (CE). The roundtable was prompted by the pendency of 12 CE bills in the legislature. Richards reported that, of the 43 agencies within DCA, 19 require some form of CE. However, the general consensus of the staff of these agencies is that CE, in most instances, is of questionable value to both participants and consumers. SPAEC currently has no CE requirement, but has seriously considered sponsoring legislation to impose one in the past. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 79-80; Vol. 10, No. 4 (Fall 1990) p. 96; and Vol. 9, No. 4 (Fall 1989) p. 71 for background information.)

Also in April, SPAEC again discussed speech pathology aides, the limited amount of supervision many of them receive from their supervisors, and the practice of many speech pathologists to charge the same amount for services performed by aides. Staff reminded the Committee that a new brochure designed to inform supervisor-licensees of the duties which aides may and may not perform is on order, and will be included in the aide application packet in the future. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 111 for background information.) Committee member Gail Hubbard stated that she has no reservation about denying an application for registration of an aide if the supervisor does not intend to properly supervise the aide.

FUTURE MEETINGS:
September 6 in Los Angeles. November 8 in Sacramento.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
Executive Officer: Ray F. Nikkel
(916) 920-6481

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:
Nursing Home Reform Act Controversy Settled. On April 30, the federal Health Care Financing Administration (HCFA) and California's Department of Health Services (DHS) reached a settlement regarding California's implementation of the federal Nursing Home Reform Act passed by Congress in December 1987; the Act became effective on October 1, 1990. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 94-95 for background information.) This settlement removed the need for an administrative hearing scheduled by HCFA to formally cite the state for failing to implement the nursing home reforms.

Under the settlement, the state's nursing homes will receive increased Medicaid payments to assist them in implementing the federal reforms. In addition, HCFA will consider California's proposed changes to the regulations implementing the reforms, which would give state inspectors more latitude in enforcing sections of the law dealing with (among other things) a nursing home's use of chemical and physical restraints, and residents' control over their own care. HCFA will compile and circulate the proposed guideline changes submitted by California and other states; only after all states have had the opportunity to comment on the proposed revisions will HCFA determine the final guidelines. In the meantime, California has apparently agreed to abide by the original guidelines, and federal inspectors are satisfied that such compliance is occurring.

The Commission on California State Government Organization and Economy (Little Hoover Commission) and senior citizens groups contend that the use of physical and chemical restraints and the issue of resident control over care were specifically addressed by the Nursing Home Reform Act, and advocate full implementation of the Act to protect nursing home residents' rights (see infra). According to these groups, state law has not effectively addressed the problem of abuse inflicted on skilled nursing home residents through the use of chemical and physical restraints; such restraints are often used by skilled nursing home facilities to reduce operational costs, such as additional staff to monitor and assist residents, and to address discipline problems arising from overmedication and dementia. Further, these groups are concerned that skilled nursing home residents are often moved, given roommates, and administered medication without advance notice or consent. These groups are expected to monitor the state's implementation of the federal reforms to determine whether they result in improved nursing home conditions for the state's elderly citizens.

Little Hoover Commission Reviews Status of California's Nursing Homes. In April, prior to the announced settlement between HCFA and DHS (see supra), the Little Hoover Commission released a report entitled Skilled Nursing Homes: Care Without Dignity, in which the Commission criticized state regulators for allowing nursing homes to physically and chemically restrain patients, and state enforcement practices which have allowed violators to receive waivers of and/or reductions in their fines. The Commission found that 68% of the state's nursing home residents are chemically or physically restrained, a percentage which far exceeds that of any other state; reported that over a five-year period, fines imposed for failing to meet state standards increased 443%, but collection of those fines increased only 87%; and noted that one nursing home conglomerate, which operates 58 facilities in California, had incurred 587 citations totalling $2 million in fines, but negotiated with the state to pay only $616,107 of that amount. (See supra agency report on LITTLE HOOVER COMMISSION for a more detailed summary of this report.)

According to the Little Hoover Commission, the federal Nursing Home Reform Act guarantees patients freedom from chemical or physical restraints imposed primarily to discipline the patient, or which are not administered for medical reasons. In addition, the Commission believes that the federal regulations impose requirements which will improve the quality of life of nursing home residents. For example, the federal guidelines require annual comprehensive assessment of dental condition; no state regulation requires this. The Commission therefore recommended that California immediately and fully implement the federal nursing home reforms in the manner prescribed by HCFA.

The Commission also found that DHS has failed to clearly define a skilled nursing facility resident's right to give or withhold informed consent for physical and chemical restraints. As a result, the Commission determined that nursing home residents are both unnecessarily and over-restrained. Further complicating this issue is the fact that the drug Haldol and other anti-psychotic drugs are administered in nursing homes to patients because their use is authorized under Medi-Cal, while less powerful and more appropriate drugs which may be more effective in treating elderly dementia are not authorized under Medi-Cal. Similarly, California defines some devices as "postural supports" which federal regulations consider physical restraints; this provides state nursing home facilities greater latitude in restraining patients through the use of these "postural supports."

In response to these problems, the Commission recommended that the state guarantee nursing facility residents the right to participate in treatment planning, and an opportunity to grant or withhold informed consent for physical and chemical restraints; restrict the use of "as needed" prescriptions for medications which are subject to abuse in nursing homes; direct DHS to create a Medi-Cal drug approval system which will meet the needs of long-term care patients; and require DHS to gather statistics annually on the number of nursing home residents who are physically or chemically restrained and on the number who are incapable of giving informed consent and have no representative to make decisions on their behalf.

In addition, while the state has established a system of fines to enforce its regulations, the Commission found that these fines are often reduced or waived. The fine for a "B" violation, which involves conduct affecting a patient's health, safety, or security, ranges from $100 to $1,000, but may be waived if the situation is corrected within twelve months. Fines for "A" violations, which seriously endanger a patient's safety with a substantial probability of death or serious bodily harm, range from $1,000 to $10,000. Fines for "AA" violations, for a violation of standards which leads to a patient's death, range from $5,000 to $25,000. If a nursing home facility pays its fine immediately and does not appeal the citation and fine, the law allows that
facility to pay only half of the imposed fine. To make the state’s citation and fine system an effective deterrent, the Commission suggested that facilities be required to pay the full amount of all fines, and that fines be doubled if a facility unsuccessfully appeals its citation.

LEGISLATION:

AB 1613 (Hannigan). Existing law requires an administrator of a residential care facility for the elderly (RCFE) if other than the licensee of the facility, to successfully complete a prescribed certification program. As amended May 6, this bill would require that the certification program contain different requirements for an individual designated as an administrator who holds a valid license as a nursing home administrator, and for an individual who was both the licensee and administrator of the facility on or before July 1, 1991. This bill is pending in the Assembly Ways and Means Committee.

AB 1191 (Epple) and AB 95 (Friedman). As amended May 23, AB 1191 would, with specified exceptions, require that a physician, prior to administration of a physical restraint to a resident of a skilled nursing facility or intermediate care facility, seek consent from the resident (if he/she has the capacity to understand and make health care decisions) or the legal representative of the resident. For a resident who lacks the ability to understand and make health care decisions, as determined by the resident’s physician, this bill would require a facility to conduct a physical restraint review process. This bill would provide that a facility shall not be subject to citation for injury or harm suffered by the resident or others due to refusal.

 Similarly, AB 95, as amended May 15, would prohibit (except in an emergency) a long-term health care facility from using a physical restraint on a resident unless the facility has verified that the resident has given his/her informed consent to the use of the physical restraint, and the informed consent has been documented by a physician in the resident’s medical record. The bill would provide that a resident’s consent to the use of physical restraints shall be considered informed consent only if the resident has voluntarily authorized the use of the physical restraint in writing prior to the application of the restraint and after the resident has been given specified information both verbally and in writing in nontechnical terms by the resident’s physician. This bill would also require that skilled nursing and intermediate care facilities’ written policies regarding patients’ rights ensure that each patient admitted to the facility has the right to be free from any physical restraint which is not required to treat the resident’s medical symptoms but is imposed for the purpose of discipline or convenience, and is notified of this right. AB 1191 and AB 95 are pending in the Assembly Ways and Means Committee.

SB 679 (Mello), as amended May 8, would authorize courts to award attorneys’ fees and specified damages where it is proven by clear and convincing evidence that a defendant is liable for abuse of an elder or dependent adult, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse. This bill passed the Senate on May 30 and is pending in the Assembly Judiciary Committee.

SB 664 (Calderon), as introduced March 5, would prohibit nursing home administrators, 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, except as specified. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

Only four of the nine members attended the March 22 BENHA meeting in San Diego. Because the Board lacked a quorum, it was unable to take any action on agenda items.

FUTURE MEETINGS:

August 14 in Los Angeles.

BOARD OF OPTOMETRY
Executive Officer: Karen Ollinger (916) 323-8720

Pursuant to Business and Professions Code section 3000 et seq., the Board of Optometry is responsible for licensing qualified optometrists and disciplining unqualified 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 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 Releases Newsletter. In April, the Board sent out a newsletter entitled News, directed towards practitioners of optometry. News includes guidelines for advertising, an update on enforcement activity, and an update on pending or proposed regulatory and legislative amendments.

According to News, the Board will conduct a random audit of California licensed optometrists to ensure that they have complied with the mandatory continuing education requirement of twenty hours per year. The newsletter advises all optometrists to have their complete records available for the Board’s review.

The April edition of News also included a section entitled “Important Information All California Licensed Optometrists Should Know.” Included in this section is the statement that any patient or patient’s representative is entitled to copies of all of their patient records, upon presenting a written request to the optometrist specifying the records to be copied. According to News, the optometrist must ensure that the requested copies are transmitted within fifteen days after receiving the written request.

Foreign Graduates. A refresher course for graduates of foreign optometric schools is scheduled to start in September. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 95; Vol. 11, No. 1 (Winter 1991) p. 81; and Vol. 10, No. 4 (Fall 1990) p. 97 for extensive background information.) The course will be offered in Los Angeles through the UCLA Health Sciences Extension Program. The Board is currently considering candidates for the position of Course Coordinator. On April 15, Professor Anthony Adams of UC Berkeley’s School of Optometry declined an offer to take the position, stating that the five months until the course is scheduled to begin does not provide sufficient time to analyze the needs of foreign graduates and prepare a curriculum.

Regulatory Changes. The Board’s regulations committee was scheduled to meet in Sacramento on April 10 to continue its comprehensive review of the Board’s regulations; however, this meeting was cancelled. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 96 and Vol. 11, No. 1 (Winter 1991) p. 81 for background information.)

Board Announces Collagen Policy. During 1991, the Board has received various inquiries regarding the propriety of optometrists placing collagen implants into a patient’s tear ducts. Apparently, some optometrists contend that the procedure is merely diagnostic