



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 1615 (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 the 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
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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.

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



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and falls within the scope of the practice of optometry. However, on May 1, Board staff responded to these inquiries, stating that the "use of collagen implants by an optometrist would not be within the current scope of optometric practice."

Board Relocates Office. Effective June 10, the Board moved its office to a new location at 400 R Street, Suite 3130, Sacramento, CA 95814.

LEGISLATION:

SB 664 (Calderon), as introduced March 5, would prohibit optometrists, 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.

AB 1479 (Burton). The Robert W. Crown California Children's Services Act requires the Department of Health Services (DHS) to establish and administer a program of services for physically defective or handicapped persons under the age of 21 years; the Act requires the DHS Director to establish those conditions coming within the definition of "handicapped child." As amended May 29, this bill would require any condition established by the Director which is treatable by an ophthalmologist to be deemed treatable by an optometrist if the condition is within the scope of practice of optometry. This bill is pending in the Assembly Ways and Means Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at page 96:

AB 1124 (Frizzelle), as introduced March 5, would, among other things, 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 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 amended April 15, this bill would instead require a registered optometrist to furnish to each patient there fitted or supplied with prescription spectacle lenses a specified receipt. This bill passed the Senate on May 2 and is pending in the Assembly Health Committee.

AB 1046 (Tucker), as introduced March 4, would add optometrists to the list of individuals required to report any evidence of abuse of an elderly or dependent person. This bill was passed by the Assembly on May 30 and is pending in the Senate Judiciary Committee.

LITIGATION:

April 8 was the Federal Trade Commission's (FTC) deadline for seeking U.S. Supreme Court review of the D.C. Circuit's decision in *California State Board of Optometry v. Federal Trade Commission*, 910 F.2d 976 (D.C. Cir. 1990). The FTC failed to file a petition for *certiorari*; thus, the Board has prevailed in its challenge to the FTC's jurisdiction to adopt rules prohibiting state boards of optometry from engaging in anticompetitive conduct. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 96; Vol. 11, No. 1 (Winter 1991) p. 81; and Vol. 10, No. 4 (Fall 1990) pp. 97-98 for background information on this case.)

RECENT MEETINGS:

At its May 23 meeting, the Board reviewed a draft of its Consumer Education Pamphlet, which is expected to be released in late 1991. The pamphlet contains information about the Board; defines the differences between an optometrist, an ophthalmologist, and an optician; describes common eye and refractive conditions; discusses environmental considerations relevant to eye safety; describes the contents of an adequate eye examination; provides information about contact lenses; informs consumers about steps to take if they are dissatisfied with the services received; and discusses the confidentiality of a patient's records and the patient's right to obtain copies of his/her records.

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.

MAJOR PROJECTS:

Pharmacy Shortage. On April 23, the Board submitted written testimony to the Office of Statewide Health Planning and Development regarding the shortage of pharmacists in California. The Office had solicited testimony in conjunction with two statewide hearings it conducted during April and May, the results of which will be compiled in a report to the legislature with findings and recommendations relative to the need for allied health professionals in California.

In its testimony, the Board noted that there is a general consensus among interested parties that the pharmacy shortage is due in part to outside influences on the profession (such as insurance companies) which are dictating practice decisions; practicing pharmacists discouraging students from entering into the profession; job dissatisfaction due to stress and long hours; difficulty with the California examination; and significant changes in the pharmacist population.

According to the Board, there are a number of possible responses to the