



## REGULATORY AGENCY ACTION

specified exceptions. This bill was signed by the Governor on October 11 (Chapter 841, Statutes of 1991).

**AB 1675 (Margolin)**, as introduced July 18, would have required the Board to designate a statewide drug information center for the purpose of offering direct telephone assistance or referral to health care providers for any person desiring information relating to prescription drugs. The bill would have required the Board to provide on license renewal forms an opportunity to make voluntary contributions to the statewide drug information center. This bill was vetoed by the Governor on October 13.

**SB 594 (Roberti)**, as amended July 18, would have required the State Department of Alcohol and Drug Programs and the Department of Aging to jointly administer a statewide roundtable to develop a consistent, long-term medication education program model for elderly consumers. This bill was vetoed by the Governor on October 9.

**SB 664 (Calderon)**, as introduced March 5, would prohibit pharmacists, 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 1226 (Hunter)**, as introduced March 6, would change the standard to be applied by the Director of the Department of Health Services in establishing a formulary of generic drug types and drug products, to require him/her to identify those generic drug types and drug products which, if substituted by a pharmacist for a drug product described by the prescriber by its trade or brand name, may pose a threat to the health and safety of patients. This bill is pending in the Assembly Health Committee.

**SB 1033 (Marks)**, as introduced March 8, would permit pharmacists to manufacture, measure, fit to the patient, sell, and repair medical devices without regard to whether they bear a specified legend relating to a federal prohibition against dispensing without a prescription. This bill is pending in the Senate Business and Professions Committee.

**AB 855 (Hunter)**, as amended July 16, would require a pharmacist to obtain a patient's consent prior to filling a prescription order for a drug product prescribed by its trade or brand name with a substitute drug product. This two-year bill is pending in the Senate Business and Professions Committee.

**SB 917 (Kopp)**, as amended June 11, would require certain health care service plans that propose to offer a pharmacy benefit or change its relationship with pharmacy providers to give written or published notice to pharmacy service providers of the plan's proposal, and give those providers an opportunity to submit a bid to participate in the plan's panel of providers on the terms proposed. This bill is pending at the Assembly desk.

**AB 819 (Speier)**. Existing law provides that it is not unlawful for prescribed licensed health professionals to refer a person to a laboratory, pharmacy, clinic, or health care facility solely because the licensee has a proprietary interest or coownership in the facility. As introduced February 27, this bill would instead provide that, subject to specified exceptions, it is unlawful for these licensed health professionals to refer a person to any laboratory, pharmacy, clinic, or health care facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest; the bill would also provide that disclosure of the ownership or proprietary interest does not exempt the licensee from the prohibition. This bill is pending in the Assembly Health Committee.

### RECENT MEETINGS:

At the Board's July 31 meeting, staff reported that a budget change proposal to create a toll-free telephone number for consumer inquiries has been postponed until the 1993-94 fiscal year. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 103 for background information.) The postponement was attributed to the need to concentrate funding on the Board's enforcement backlog.

### FUTURE MEETINGS:

January 22-23 in Sacramento.

March 18-19 in San Diego.

May 27-28 in Sacramento.

### BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

*Executive Officer: Darlene Stroup*  
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The Board of Registration for Professional Engineers and Land Surveyors (PELS) regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act, sections 6700 through 6799 of the Business and Professions Code, and the Professional Land Surveyors' Act, sections 8700 through 8805

of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR).

The basic functions of the Board are to conduct examinations, issue certificates, registrations, and/or licenses, and appropriately channel complaints against registrants/licensees. The Board is additionally empowered to suspend or revoke registrations/licenses. The Board considers the proposed decisions of administrative law judges who hear appeals of applicants who are denied a registration/license, and those who have had their registration/license suspended or revoked for violations.

The Board consists of thirteen members: seven public members, one licensed land surveyor, four registered Practice Act engineers and one Title Act engineer. Eleven of the members are appointed by the Governor for four-year terms which expire on a staggered basis. One public member is appointed by the Speaker of the Assembly and one by the Senate President pro Tempore.

The Board has established four standing committees and appoints other special committees as needed. The four standing committees are Administration, Enforcement, Examination/Qualifications, and Legislation. The committees function in an advisory capacity unless specifically authorized to make binding decisions by the Board.

Professional engineers are registered through the three Practice Act categories of civil, electrical, and mechanical engineering under section 6730 of the Business and Professions Code. The Title Act categories of agricultural, chemical, control system, corrosion, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, and traffic engineering are registered under section 6732 of the Business and Professions Code.

Structural engineering and geotechnical engineering are authorities linked to the civil Practice Act and require an additional examination after qualification as a civil engineer.

### MAJOR PROJECTS:

**Rulemaking Update.** At its August 2 meeting, the Board discussed proposed changes to section 472, Division 5, Title 16 of the CCR (fines for citations against a professional engineer or land surveyor). (See CRLR Vol. 11, No. 3 (Summer 1991) p. 104 and Vol. 11, No. 2 (Spring 1991) pp. 100-01 for background information.) The proposed section would authorize the Board to impose fines up to \$2,500 and lists seven factors the Executive Officer should



consider when determining the fine's amount. The Board could not agree on whether it, a Board subcommittee, or the Executive Officer should issue citations and fines, and deferred action on section 472 to its November meeting.

Also in August, the Board decided to release a modified version of proposed changes to sections 424 (experience requirements for professional engineer registration), 425 (experience requirements for land surveyor registration), 464 (single corner record), and 465 (time extensions for record of survey) for an additional 15-day comment period commencing September 13. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 104; Vol. 11, No. 2 (Spring 1991) pp. 100-01; and Vol. 10, No. 4 (Fall 1990) p. 101 for extensive background information.) The modified language was scheduled to be presented to the Board for adoption at its October 4 meeting.

On August 12, the Board held a public hearing on three proposed regulatory changes. First, PELS proposed to adopt new section 424(f), which would define "qualifying experience" for civil engineers as "experience satisfactory to the Board which has been gained under the immediate direction and supervision of a registered civil engineer." Under proposed section 424(f), applicants must prove they have gained qualifying experience in the areas described under the guidelines in section 426.60. The Board also proposed to adopt new section 426.60, which defines "qualifying experience" as "professional level work on civil engineering projects." Under proposed section 426.60, applicants must demonstrate "working knowledge" in two or more of the following areas: bridge design, concrete design, construction, dam design, highway engineering, hydraulic design, hydrology, materials testing and analysis, office management, seismic design, subdivision development, and water/wastewater facility design and operation.

Finally, the Board proposed to amend section 424(b). That section currently provides that an applicant for registration as a professional engineer shall be credited with four years' experience for graduation from an approved engineering curriculum, or with two years' experience for graduation from a nonapproved engineering curriculum or an approved engineering technology curriculum; under section 424(b), the additional actual work experience toward the six-year "qualifying experience" requirement must be gained after graduation. The Board's proposed amendment to subsection (b) would provide an exception to the after-

graduation requirement for cooperative work-study experience, and add that a maximum of five years' experience shall be credited for graduation from an approved cooperative work-study engineering curriculum. Following the August 12 hearing on these proposed changes, the Board deferred action until its October 4 meeting.

On September 10, OAL approved PELS' proposed amendments to sections 407 and 444, regarding examination appeal fees. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 104 and Vol. 11, No. 2 (Spring 1991) p. 100 for background information.)

**DCA's Internal Investigation Findings Announced.** In July, the Department of Consumer Affairs' (DCA) Division of Investigation completed its internal investigation into the conduct of the Board, and specifically Board member James Dorsey, in amending the grading plan of the October 1989 land surveyor examination. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 104; Vol. 11, No. 2 (Spring 1991) p. 101; and Vol. 11, No. 1 (Winter 1991) pp. 85-86 for background information.) The scope of DCA's investigation was enlarged to include a review of PELS' entire examination process, including the contract award to CTB McMillan/McGraw-Hill (CTB) and allegations of misconduct on the part of the examination contractor, Board members, and/or Board staff.

According to DCA Director Jim Conran, the investigation determined that Dorsey did not engage in any activities which constitute a conflict of interest, and there is no evidence of violations on the part of any other Board member, staff, or CTB. The investigation did, however, identify several problems with the Board's operating procedures. Conran informed the Board that it "needs to develop and establish a clearly defined procedure regarding the handling of examination appeals and challenges to an examination grading plan." Conran also noted that the investigation revealed a lack of communication among various parties; he stated that the Board needs to "establish better communication procedures so that all members are kept apprised of board matters." Finally, Conran reminded the Board members "of the ethical considerations, both real and the appearance of, associated with the office they hold."

In a September 13 response to Conran, Board President Robert Young blamed unauthorized activity by PELS staff as the source of the controversy. "The problem was not the lack of a procedure; it was the blatant disregard of the procedures established by Rule

444 and related regulations and the unwarranted assumption of authority by the staff that created the problem." However, Young acknowledged that "[t]he responsibility for the very existence of this problem must in the final analysis rest with the board itself which permitted, and in some instances, possibly encouraged the Executive Officer to act on her own initiative without keeping the board informed. The proper staff-board relationship has now been disseminated to staff and corrective measures taken to ensure that the correct policy is being followed."

**PELS Amends Consumer Complaint Form.** On August 21, Enforcement Committee chair Robert J. Verderber informed Center for Public Interest Law (CPIL) intern Bill Braun that, due to Braun's request for determination regarding PELS' policy of refusing to address fee disputes as disciplinary complaints, the Board has decided to delete the "no-fee-disputes" language from its consumer complaint form. Braun filed the request for determination with OAL and drafted AB 1801 (Frazee) (*see infra* LEGISLATION) in response to the Board's refusal to adopt regulations governing engineer billing practices, and to challenge its policy of disclaiming authority over engineering fee disputes. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 104; Vol. 11, No. 2 (Spring 1991) p. 101; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 119 for background information.)

The consumer complaint form states: "The Board does not have authority to investigate disputes regarding client fees. Such disputes are considered civil matters. If you have a fee dispute, you may wish to contact an attorney of your choice or to resolve the dispute in small claims court." In his letter, Verderber acknowledged that "the statement may be misleading in that it may discourage individuals from filing complaints on which the Board is authorized to act. For example, we do investigate allegations of violations of contract and of willfull [sic] misconduct. In addition, while the Board does not take formal action on fee disputes, we do attempt to mediate them whenever possible."

Braun's request for determination remains pending at OAL.

#### LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 104-05:

**AB 427 (Lancaster)**, as amended May 15, provides that a person practices land surveying if he/she makes, or



## REGULATORY AGENCY ACTION

offers to make, specified determinations by means of applying the principles of mathematics, rather than the principles of trigonometry. This bill was signed by the Governor on August 29 (Chapter 350, Statutes of 1991).

**SB 527 (Davis)**, as amended May 20, extends until January 1, 1997, existing law which provides that, in specified actions for indemnity or damages arising out of the professional negligence of a person licensed as an engineer or land surveyor, the plaintiff's attorney is required to attempt to obtain consultation with at least one professional engineer or land surveyor who is not a party to the action and file a certificate which declares why the consultation was not obtained or which declares that, on the basis of the consultation, the attorney believes there is reasonable and meritorious cause for filing the action. This bill was signed by the Governor on July 29 (Chapter 272, Statutes of 1991).

**AB 1269 (Mays)**, as amended July 10, authorizes city or county engineers registered as civil engineers after January 1, 1982, to make specified statements required by the Subdivision Map Act; and authorizes persons eligible to practice land surveying pursuant to the Professional Land Surveyors' Act or persons registered as civil engineers prior to January 1, 1982, pursuant to the Professional Engineers Act to make a statement that they are satisfied that a parcel map submitted for a subdivision is technically correct, as required by the Act. This bill was signed by the Governor on October 9 (Chapter 738, Statutes of 1991).

**AB 1801 (Frazee)**, as amended July 11, would require contracts for engineering services between registered professional engineers and consumers to be in writing and to contain specified provisions, including a prominent-type notice to consumers that engineers are regulated by PELS. This two-year bill, which is opposed by the Board, is pending in the Senate Business and Professions Committee.

**SB 201 (L. Greene)**, as amended April 9, would amend the Professional Engineers Act to require that an applicant for registration as a professional engineer furnish evidence to PELS of eight years or more of qualifying experience in engineering work satisfactory to the Board. Commencing January 1, 1994, this bill would also prohibit the Department of Transportation from requiring a civil engineer to be registered to qualify for or advance to civil engineering positions, as specified. This two-year bill, which is opposed by the Board,

is pending in the Senate Business and Professions Committee.

**AB 801 (Lancaster)**, as amended April 16, would require any found, unreferenced, and unmarked monument found in connection with a survey used or accepted by a licensed land surveyor or registered civil engineer to mark or reference a point on a property or land line, to be marked or tagged permanently and visibly with the certificate number of the land surveyor or civil engineer accepting the monument. This bill is pending in the Assembly Local Government Committee.

**AB 640 (Lancaster)**, as amended May 8, would, among other things, delete a provision of law that excludes public officers from the requirement that a record of survey be filed in specified circumstances; delete the requirement that a county surveyor prepare a map of retracement or remonument surveys and make the map a part of the public records within 90 days; and require the county surveyor to instead assure compliance with the Land Surveyors' Act for those surveys. This two-year bill is pending in the Assembly Ways and Means Committee.

**AB 1268 (Mays)**, as amended April 15, would revise the second division of the examination for registration as a professional engineer and the examination procedure for licensure as a land surveyor. This bill would require PELS to prescribe by regulation reasonable education or experience requirements, but not to exceed three years of either postsecondary education or experience in land surveying. This two-year bill, which is opposed by the Board, is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

**SB 575 (L. Greene)**, as amended April 16, would require, on the civil engineering examination, that the questions regarding seismic principles be general and conceptual in nature rather than specific structural design problems. This bill, which would be operative until January 1, 1995, would also require PELS to make an annual report containing specified information to certain legislative committees on or before January 30 of each year. This two-year bill, which is opposed by the Board, is pending in the Senate inactive file.

**SB 416 (Royce)**, as amended April 18, would provide, on or after July 1, 1992, that no person shall practice photogrammetry or use the title of photogrammetric surveyor unless he/she is a licensed photogrammetric surveyor, a registered civil engineer, or a licensed land surveyor. This bill, which would

also require PELS to establish qualifications and standards to practice photogrammetry, is pending in the Senate Business and Professions Committee.

**AB 1354 (Tanner)**, as amended August 19, would prohibit any person from engaging in the practice of chemical engineering unless he/she is registered by PELS. This bill is pending in the Senate Business and Professions Committee.

### LITIGATION:

Following their ejection from PELS' May 10 meeting and the Board's refusal to reopen a disciplinary investigation of alleged unlicensed practice in Sacramento, Charles E. Shoemaker and Charles O. Greenlaw filed *Shoemaker, et al. v. Board of Registration for Professional Engineers and Land Surveyors*, No. 367294 (Sacramento County Superior Court), on July 3. This petition for writ of mandate, filed by petitioners acting as their own counsel, alleged that the Board failed to conduct a proper investigation before dismissing Greenlaw's unlicensed practice complaints against City of Sacramento employee Marilyn Kuntemeyer and one associate of an engineering consulting firm hired by the City. When Greenlaw and Shoemaker attempted to press the Board for its reasoning on the issue, then-Board President Ernie Short called the Burlingame police and had them removed from PELS' May meeting. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 104 and Vol. 11, No. 2 (Spring 1991) p. 103 for background information.)

On behalf of PELS, the Attorney General's office demurred to the petition on September 3, arguing that petitioners lacked standing to seek a writ of mandate, failed to allege that the Board refused or failed to perform a ministerial act which may be compelled by a writ of mandate, and that the petition was "uncertain, ambiguous, and unintelligible." On October 1, the court granted the AG's demurrer and dismissed the complaint without leave to amend.

### RECENT MEETINGS:

At its August 2 meeting, PELS incoming president Robert Young formally took office and, in addition to its usual business, the Board approved nominations, appointments, and workplans for its Technical Advisory Committees. The Board also voted to accept the request of the Washington Board of Registration for Professional Engineers and Land Surveyors to cancel the Special Services Agreement that was implemented between the two



boards in March 1990. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 117-18 for background information.)

## FUTURE MEETINGS:

April 10 in Sacramento.  
June 5 in San Diego.  
July 31 in Sacramento.

## BOARD OF REGISTERED NURSING

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Pursuant to the Nursing Practice Act, Business and Professions Code section 2700, *et seq.*, the Board of Registered Nursing (BRN) licenses qualified RNs, certifies qualified nurse midwifery applicants, establishes accreditation requirements for California nursing schools, and reviews nursing school curricula. A major Board responsibility involves taking disciplinary action against licensed RNs. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR).

The nine-member Board consists of three public members, three registered nurses actively engaged in patient care, one licensed RN administrator of a nursing service, one nurse educator, and one licensed physician. All serve four-year terms.

The Board is financed by licensing fees, and receives no allocation from the general fund. The Board is currently staffed by 60 people.

## MAJOR PROJECTS:

**Proposed Regulatory Action.** In August, BRN announced its intention to amend section 1443.5(4), Division 14, Title 16 of the CCR, to authorize RNs to assign nursing tasks according to a specific protocol to subordinates, including unlicensed personnel. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 106 and Vol. 11, No. 1 (Winter 1991) p. 87 for background information.) Although the registered nurse would be able to assign tasks to a subordinate, he/she would retain responsibility for the tasks assigned. Pursuant to BRN's proposed language, the specific protocol would be "a written plan developed by a registered nurse(s) including but not limited to: the nursing task to be assigned; circumstances under which the registered nurse may assign the task; the registered nurse's initial and ongoing assessment of the patient; degree of registered nurse supervision required; education and training required to prepare the sub-

ordinate to safely and competently perform the task; the method of initial and ongoing evaluation of the subordinate in the performance of the task; signs and symptoms for which the registered nurse must be notified." Public hearings on the proposed revisions began on September 25 and were scheduled to continue through October 16.

**Computer Adaptive Testing.** The National Council of State Boards of Nursing (NCSBN), the national organization which provides the standardized licensing examination for registered nurses (NCLEX-RN), has agreed to implement computer adaptive testing (CAT) as the only test available in all states at the same time as early as November 1993. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 106 and Vol. 10, No. 1 (Winter 1990) p. 93 for background information.) At its September meeting, BRN discussed the magnitude of the project, and is requesting that NCSBN reanalyze its data and push back its proposed date of program implementation. The Board also discussed the need to introduce legislation to modify existing law concerning BRN's written exams to reflect the new CAT system.

**English as a Second Language Issue.** On April 30, BRN submitted a resolution to NCSBN, requesting that NCSBN conduct a study to determine whether the time allotted to complete the NCLEX-RN is a factor in a candidate's performance and, if so, whether it is a more significant factor for students who speak English as a second language (ESL) than for native English-speaking candidates. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 106 for background information.) At its September meeting, BRN announced that it was successful in its request, and that the study's results will be presented at the NCLEX Delegate Assembly in August 1992. The Board may continue to request that the time allowed per item on the NCLEX-RN be increased as necessary for all candidates so that time is not a barrier to success on the exam.

**BRN Revises Nurse-Midwifery Advisory Committee.** At its September meeting, the Board unanimously approved changes to its Nurse-Midwifery Advisory Committee (NMWAC), which is appointed to advise the Board on matters relating to nurse-midwifery, develop standards related to educational requirements, and provide such assistance as may be required in the evaluation of applications for nurse-midwifery certification. The Board increased the number of committee members from five to nine (six certified nurse-midwives, one physician, one RN, and one public mem-

ber), and increased the term served from two to three years; term expiration dates will be staggered to ensure continuity. The Board believes that allowing members to serve for a period of three years will enable NMWAC to remain consistent in its approach to midwifery issues.

**Recommended Guidelines for Disciplinary Orders and Conditions for Probation.** At its July meeting, the Board was presented with the Diversion-Discipline Committee's recommended Guidelines for Disciplinary Orders and Conditions of Probation. According to BRN, these guidelines are intended to protect the consumer of nursing services from the unsafe, incompetent, and/or negligent registered nurse. These guidelines provide that if at the time of the disciplinary hearing the administrative law judge finds that the respondent for any reason is not capable of safe practice, the Board favors revocation of the license. If the respondent demonstrates the capacity to practice safe nursing, a stayed revocation order with probation is recommended. Suspension of a license may also be appropriate where the public may be better protected if the RN's practice is suspended in order to correct deficiencies in skills, education, or personal rehabilitation. At its July meeting, BRN discussed additional revisions to be made to the guidelines. At its September meeting, the Board approved the guidelines.

**Diversion-Discipline Committee Enforcement Program Goals.** At its September meeting, the Board agreed that the goal of its Diversion-Discipline Committee is to ensure consumer protection by restricting, monitoring, and rehabilitating the practice of registered nurses who have violated the Nursing Practice Act and related laws. The Committee will attempt to achieve this goal by exploring options and developing a plan for more timely action on disciplinary matters; reviewing and approving a plan for implementation of SB 2335 (Montoya) (Chapter 1379, Statutes of 1986), which authorized the Board to promulgate regulations for the issuance of citations or fines for violations of the Nursing Practice Act and BRN's regulations; reviewing and approving a plan for the use and payment of expert witnesses; increasing the level of monitoring of RNs who are on probation; updating and developing written policies and procedures for the enforcement program; conducting a study to evaluate the quality and cost-effectiveness of investigative reports and techniques; and completing a joint Enforcement/Diversion statistical and analytical study of RNs to identify,