



## REGULATORY AGENCY ACTION

scheduled to revisit this issue at its October meeting.

### LEGISLATION:

**AB 1660 (Speier)**, as amended August 29, would require the presence of a licensed veterinarian during any rodeo sanctioned by the Professional Rodeo Cowboy Association or the International Professional Rodeo Association; require that a veterinarian be on call at all other rodeos and available to respond as expeditiously as possible; authorize the Director of the Department of Food and Agriculture to waive the requirement that a veterinarian be present at the rodeo, under specified conditions; and require the immediate treatment of animals injured during the course of, or as a result of, any rodeo. This two-year bill is pending in the Senate Appropriations Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at page 112:

**AB 2021 (Polanco)**, as amended September 10, prohibits a dog from being offered for sale by a pet dealer until the dog has been examined by a licensed veterinarian, and requires a pet dealer to have each dog examined by a licensed veterinarian within five days of receiving the animal and once every fifteen days thereafter while the animal is in the possession of the dealer, provide any sick dog with proper veterinary care without delay, and cage any dog found to be afflicted with a contagious or infectious disease separately from healthy dogs until the time that a licensed veterinarian determines that the dog is free from contagion or infection. This bill also requires a veterinarian to humanely euthanize an animal if the veterinarian deems an animal to be unfit for purchase due to a fatal disease, illness, or congenital condition, as prescribed. This bill was signed by the Governor on October 14 (Chapter 1099, Statutes of 1991).

**SB 15 (Robbins)**, as amended July 18, provides that every person who steals or maliciously takes or carries away any animal of another for purposes of sale, medical research, or other commercial uses, or who knowingly, by a false representation or pretense, defrauds another person of any animal, for purposes of medical research or slaughter, is guilty of a public offense punishable by imprisonment in county jail or state prison not exceeding one year. This bill was signed by the Governor on October 5 (Chapter 490, Statutes of 1991).

**AB 1429 (Gotch)**, as amended May 30, clarifies that the examination for veterinarian licensure consists of a na-

tional examination consisting of a basic examination and a clinical competency test, and California's state board examination; makes certain changes to the licensure requirements for out-of-state applicants; and authorizes the Board to deny, revoke, or suspend a veterinary license or assess a fine for cruelty to animals. This bill was signed by the Governor on October 14 (Chapter 1032, Statutes of 1991).

**AB 1893 (Lancaster)**, as amended May 24, revises certain procedures with respect to penalties and fines imposed upon persons licensed by the Board. This bill was signed by the Governor on October 7 (Chapter 654, Statutes of 1991).

**SB 664 (Calderon)**, as introduced March 5, would prohibit veterinarians, 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 two-year bill is pending in the Senate Business and Professions Committee.

**SB 663 (Maddy)**, as amended May 2, would, among other things, require licensed veterinarians to complete a minimum of 50 hours of continuing education (CE) approved by the Board during each two-year licensure period as a condition of license renewal, and require the Board to publish a list of professional associations, organizations, educational institutions, and other providers which it approves to provide CE to veterinarians for credit under this bill. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 89-90; Vol. 10, No. 4 (Fall 1990) p. 108; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 127 for background information on this issue.) This two-year bill is pending in the Assembly Agriculture Committee. The Board has postponed work on this bill pending a Department-wide study of mandatory CE currently being conducted by DCA.

### LITIGATION:

In *Hall v. Kelley*, No. G009476 (Fourth District Court of Appeal), Dr. Linda Hall, who suffers from dyslexia, appeals the Orange County Superior Court's dismissal of her lawsuit against BEVM for its alleged failure to provide an adequate setting for her to take the practical exam. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 113; Vol. 11, No. 2 (Spring 1991) p. 109; and Vol. 11, No. 1 (Winter 1991) p. 91 for extensive background information.) Dr. Hall seeks a ruling that she adequately alleged causes

of action against BEVM for violation of her statutory rights under 29 U.S.C. section 794, Government Code sections 11135 and 12946, and her rights to due process and equal protection under the U.S. Constitution. Alternately, Dr. Hall seeks leave to re-amend her amended complaint to correct any deficiencies the court may find. The Fourth District Court of Appeal heard oral argument on September 19; the court is expected to issue a decision by the end of the year.

### RECENT MEETINGS:

At BEVM's July 11-12 meeting, Executive Officer Gary Hill reported that the average length of time to complete a citation and fine case is four months. The average staff cost of an informal citation and fine hearing is \$172; the average fine is over \$400.

Also at its July meeting, the Board decided to draft a sample news release regarding legal issues raised by chiropractors and acupuncturists who work on animals. BEVM staff will work with DCA Public Information Officer Robin Witt in preparing the document.

### FUTURE MEETINGS:

To be announced.

### BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

*Executive Officer: Billie Haynes (916) 445-0793/(916) 323-2165*

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 65,830



LVNs with active licenses, 35,167 LVNs with delinquent active licenses, and 11,745 with inactive licenses, for a total LVN population of 112,742. The Board's psych tech population includes 13,571 with active licenses and 4,741 with delinquent active licenses, for a total of 18,312 psych tech practitioners.

## MAJOR PROJECTS:

**Regulatory Action on Psych Tech Continuing Education and Conversion to Biennial Renewal System in 1992.** Section 4517 of the Business and Professions Code authorizes the Board to require continuing education (CE) as a condition for psych tech license renewal. After deferring action at its March 13 hearing, the Board held another public hearing on September 11 on proposed sections 2592.2-2592.5 and 2592.7, Division 25, Title 16 of the CCR, which specify psych tech CE course requirements. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 110 and Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) These regulatory changes were adopted by the Board with only minor revisions from the text previously proposed in March.

Also on September 11, the Board amended section 2590 and adopted new section 2590.1. Revised section 2590 converts psych tech licensees from an annual renewal fee of \$45 to a biennial renewal fee of \$90. New section 2590.1 implements section 4518 of the Business and Professions Code, which authorizes collection of a biennial fee not to exceed \$150 from any CE provider who requests course approval from the Board. Section 2590.1 sets the fee for approval of a CE provider at \$150 every two years.

These regulatory changes await review and approval by the Office of Administrative Law (OAL).

**Amendments to Curriculum Regulations.** After deferring action at its March meeting, the Board held another public hearing on proposed revisions to regulatory sections 2533 and 2587, which specify required curriculum content for LVN and psych tech programs, respectively. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 110; Vol. 11, No. 1 (Winter 1991) p. 92; and Vol. 10, No. 4 (Fall 1990) p. 110 for background information.) Speaking on behalf of the Board of Registered Nursing, Ursula Guthornsen argued for modifications to the psych tech curriculum proposed in amended section 2587. Specifically, Guthornsen indicated that the Nursing Process course requirement should be eliminated and that the word "Basic"

should be inserted as a modifier to the subject headings for Medical/Surgical Nursing, Gerontological Nursing, Leadership, and Supervision courses. The Board deferred action on section 2587 until its September 13 meeting. The amendments to section 2533 were adopted at the September 11 hearing. However, at its September 13 meeting, the Board announced that both sections 2533 and 2587 would be taken up again at a future Board meeting.

**Intravenous Therapy for LVNs.** Existing regulations permit LVNs who are intravenous therapy and blood withdrawal certified to start and superimpose intravenous fluids into a primary line. As part of an effort to expand the LVN scope of practice to allow LVNs who are so certified to start and superimpose intravenous fluids via secondary infusion lines, the Board held a second public hearing on September 11 on proposed amendments to regulatory section 2547.3. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 111 and Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) Amended section 2547.3, which was the subject of a March 12 hearing, expands the content required for Board approval of courses in intravenous therapy. The Board voted to adopt the proposed amendments, revised to add universal precautions for infection control, at the September 11 hearing. These regulatory changes await review and approval by OAL.

**Other Regulatory Changes Adopted.** Also on September 11, the Board took action on several proposed regulatory changes which had been the subject of public hearings in March. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 110-11 for background information.) Although they were not listed on the Board's September 11 agenda, the following changes were adopted:

- amendments to section 2526, to specify the written documentation which must be submitted by LVN programs in connection with an application for accreditation;

- amendments to section 2527, to state that any material misrepresentation of fact in any LVN program report required by the Board is cause for revocation of accreditation;

- amendments to section 2529, to require an assistant director of an LVN program to have received instruction in administration;

- amendments to section 2530, to require LVN programs to have sufficient faculty, clinical facilities, library, staff, support services, physical space, and equipment to meet program objectives; the revision also specifies that only one

teacher assistant may be assigned to each instructor; and

- amendments to sections 2542, 2542.1, 2542.3, 2547, and 2547.1, all of which relate to expansion of the LVN scope of practice to permit intravenous therapy and blood withdrawal certified LVNs to start and superimpose intravenous fluids via secondary infusion lines (*see supra*).

Because these regulatory changes were not listed on the Board's agenda, their status is unclear at this writing.

**Board Accepts High School Proficiency Exam.** At the September 13 Board meeting, Executive Officer Billie Haynes announced that the Board now accepts the General Educational Development (GED) Test and the California High School Proficiency Examination from LVN license applicants in lieu of the required high school diploma. AB 3306 (Lancaster) (Chapter 520, Statutes of 1990) increased the educational requirements for LVNs from the tenth to the twelfth grade or the equivalent. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 93 and Vol. 10, No. 4 (Fall 1990) p. 111 for background information.) The Board decided to honor the examinations as a result of a meeting with directors of LVN programs.

**New Technician Classifications at Cedars-Sinai Medical Center.** At its September 13 meeting, the Board discussed several new job descriptions used at Cedars-Sinai Medical Center in Los Angeles. On June 28, the Board received copies of new job descriptions used at Cedars-Sinai for "Critical Care Technician," "Critical Care Technician (Labor and Delivery)," and "Medical-Surgical Technician." According to the Board, a review of these documents reveals a high level of nursing care being performed by unlicensed personnel who lack the necessary knowledge and skill to perform the tasks defined for these jobs. On July 24, the Board sent a letter to Geraldine Popolow, Vice President of Patient Care Services at Cedars-Sinai, outlining its concerns about the establishment of unlicensed categories of health care providers, the high level of skill required of these providers, and the potential threat to the health and safety of the consumer. On August 14, Board Nursing Education Consultants Teresa Bello-Jones and Ann Shuman recommended that the Board refer this important issue to its Education and Practice Committee for consideration in the context of delegation and assignment of unlicensed personnel. This recommendation was accepted by the Board at the September 13 Board meeting.



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**Psychiatric Technician Job Analysis Planned.** Also at its September 13 meeting, the Board discussed its plan to conduct a job analysis of the California Psychiatric Technician Licensure Examination. The Board decided in 1990 that a job analysis of psych tech practice should be conducted every three years as a basis for developing an examination which tests the knowledge, skills, and abilities (KSAs) necessary for current practice in the state. In March 1991, the Board formally requested the Department of Consumer Affairs' Central Testing Unit (CTU) to conduct the job analysis. On July 16, Board staff met with CTU manager Norman Hertz, who indicated that the job analysis project should begin in January 1992. The draft project plan calls for CTU to develop a questionnaire to survey tasks performed by new psych techs (one to three years in practice), and the KSAs necessary to perform them. A task list will be generated and ordered according to KSAs. A panel of subject experts will examine and rate each task according to frequency and criticality to the profession. The results will be integrated into curricula and then tested on the examination.

Surveys for the project are scheduled to take place from January through March 1992. Subject experts will examine results in May 1992. By having CTU perform certain aspects of the project, the Board will save an estimated \$68,000. However, the Board expects to incur some costs under a contract with CTB MacMillan/McGraw-Hill, in which the testing corporation will perform other aspects of the project over a two-year period.

**Proposed Recovery Program.** At its September 13 meeting, the Board reviewed a staff proposal to create a diversion program for Board licensees who abuse drugs or alcohol. According to staff, it is estimated that between 10-20% of practicing nurses are affected by chemical dependency. About 70% of disciplinary actions taken by state boards of nursing against licensees stem from violations involving chemical abuse. Of those licensees on probation with the Board, 60-70% were disciplined as a result of chemical dependency. However, less than 1% of nurses who are estimated to be chemically dependent and whose practice is impaired are reported to regulatory agencies.

In 1981, the Board studied the feasibility of establishing a diversion program for impaired licensees. At its January 1982 meeting, the Board tabled the idea due to prohibitive costs and lack of support among licensees. Since that

time, the Board has used specific conditions related to rehabilitation to deal with licensees on probation for chemical dependency.

In 1990, as the incidence of chemical dependency continued to escalate, the Board directed staff to study the feasibility of developing a diversion program for licensees. Results of that research caused the Enforcement Committee to direct staff to design a program, in concept, based on the diversion programs used by the Board of Pharmacy and the Board of Registered Nursing. However, the name of the Board's program would be changed from "diversion" to "recovery." Toward this end, staff developed a concept paper for the proposed Board of Vocational Nurse and Psychiatric Technician Examiners Recovery Program, which was reviewed and approved in concept by the Board on September 13.

The concept paper indicates the purpose of the program is "to identify and seek means to rehabilitate licensed vocational nurses and psychiatric technicians whose competency may be impaired due to use of drugs or alcohol, or due to mental illness." Components of the program would include a private sector Recovery Program Contractor, a Quality Assurance and Utilization Review Committee composed of five health professionals and one public member, and Nurse and Psychiatric Technician Support Groups. Board support staff would consist of office personnel and a Recovery Program Manager, who would have responsibility for managing and coordinating the program components.

Under the proposed program, substance-abusing licensees could enter the program in four ways: (1) on a voluntary basis; (2) on an involuntary basis, including licensees who are referred by the Board after an initial complaint is made; (3) as the result of a substantiated complaint, including licensees who are offered the program as an alternative to disciplinary action; and (4) as a Board-ordered probation condition.

Once accepted into the program, the participant's employer would become an integral part of the recovery process in order for employment to continue. Contracts would be initiated which may or may not allow employment in a health care field, medication administration, and direct patient care. These activities would be monitored by the participant's supervisor, a worksite monitor, the Recovery Program Contractor, and the Board Manager.

Participant costs or fees for the program would include a minimum monthly

participant fee to help defray program costs, body fluid testing costs, any costs related to chemical dependency or psychiatric treatment or evaluation, and support group fee-for-service charges. The participant fee may be waived or deferred for a reasonable time on an individual basis.

**Guidelines Regarding Criminal Convictions Rescinded.** At its May meeting, the Board adopted the Enforcement Committee's proposed guidelines regarding licensure applicants who have criminal convictions. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 113 for background information.) Under these guidelines, staff may approve applications submitted by applicants who have one conviction for driving under the influence (DUI) or one misdemeanor conviction, or two DUI or misdemeanor convictions, under specified conditions, within the last five years. However, staff may not approve applications from persons who have been convicted of welfare fraud or unemployment insurance fraud. At the September 13 meeting, the Enforcement Committee's recommendation to rescind these guidelines was adopted by the Board.

**Computer Testing.** The California Psychiatric Technician Computer Administered Testing Project (CAT) was implemented in April 1990. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 113; Vol. 11, No. 2 (Spring 1991) p. 111; and Vol. 11, No. 1 (Winter 1991) pp. 92-93 for background information.) Since implementation, a total of 1,293 candidates have been scheduled for examination at the Sacramento and Los Angeles test facilities. As of August 12, the passage rate for first-time examinees was 79.8%. Due to computer program modifications, no testing took place in June or July. Testing was to resume on August 19.

CTB MacMillan/McGraw-Hill (CTB), the Board's exam contractor, has recommended that a school-based practice test be administered in the summer of 1992. Computerized examinations require a large item bank to ensure test integrity, and a practice test would enable the Board to rapidly field-test new exam questions. The practice exam would be administered at four schools and, if necessary, at the CAT testing centers in Sacramento and Los Angeles. About 450 psych tech licensure candidates would be required to take the examination. Only candidates who are within one month of graduation from their school program or who have previously failed the examination would be eligible to take the practice test. The Board will schedule meetings with psych



tech educators, students, and organizations to solicit participation in the practice test.

CTB also has developed a data base program to automate the scheduling of candidates. The first phase of this program was installed in the Board's office on August 5. When completed, the program will schedule exam candidates, generate admission letters and exam rosters, and maintain a historical record of each candidate's exam performance. With this automation, the Board will soon be able to generate exam results in one day.

On June 19, the Board submitted its Post-Implementation Evaluation Report of the CAT Project, evaluating the project for the period of July 1988 through June 1991, to the Office of Information Technology. A fiscal analysis of the CAT project indicates the baseline contract is decreasing as the project matures. Using fiscal year 1989-90 as the base year, costs for operation and maintenance of the system for fiscal years 1990-91, 1991-92, and 1992-93 are projected to decrease by 48%, 52%, and 53%, respectively. Since CAT began, the number of candidates tested annually has increased from 800 to 1,200.

At the Board's September 13 meeting, Executive Officer Billie Haynes reported that the 1991 National Council of State Boards of Nursing Delegate Assembly voted to convert from paper and pencil testing to CAT testing for all LVN and registered nurse candidates in all states at one time.

**Discipline Statistics.** At the Board's September 13 meeting, Enforcement Officer Angelina Martin announced that from May through July 1991, five LVNs were disciplined for drug abuse; three LVNs and five psych techs were disciplined for unprofessional conduct; one psych tech was disciplined for charting errors; two LVNs were disciplined for gross negligence; and two psych techs were disciplined for patient abuse.

#### LEGISLATION:

**SB 1070 (Thompson)**, the Patient Protection Act of 1991, was signed by the Governor on October 14 (Chapter 1180, Statutes of 1991). This bill requires the Department of Health Services to promulgate guidelines and regulations to minimize the risk of transmission of blood-borne infectious diseases in the health care setting by January 1993. It further requires the Board, in addition to the Board of Dental Examiners, the Board of Registered Nursing, and the Medical Board, to ensure that licentiates are informed of their

responsibility to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission. This bill amends the Vocational Nursing Practice Act's definition of unprofessional conduct to include, except for good cause, a knowing failure to protect patients by failing to follow infection control guidelines and, thereby, risking the transmission of blood-borne infectious diseases.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 113-14:

**SB 664 (Calderon)**, as introduced March 5, would prohibit LVNs and psych techs, 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 two-year bill is pending in the Senate Business and Professions Committee.

**AB 2116 (Hunter)** would have required the Department of Corrections and the Department of the Youth Authority to require specified persons to obtain a license as a vocational nurse within twelve (as opposed to six) months of employment. This bill died in the Assembly Health Committee.

#### RECENT MEETINGS:

On May 20, Executive Officer Billie Haynes met with members of the Office of the Auditor General's Office (OAG). OAG has requested a report from the Board by January 1, 1992. Board staff providing data for the re-

port hoped to have a draft prepared by mid-November.

On June 4 and 5, Executive Officer Haynes met with a task force comprised of representatives of the California State Employees Association and the Department of Health Services. The group's goal is to upgrade job specifications for LVNs in state service in an attempt to achieve higher utilization of LVNs. Proposed regulatory revisions were submitted to Ms. Haynes clarifying the scope of practice, educational requirements, and current role of LVNs. These regulatory changes will be drafted and presented to the Board at a future date.

At the September 13 meeting, Executive Officer Haynes noted that about 60% of LVN licensure examination applicants speak English as a second language. Haynes stressed the need to assist these applicants through the examination process. One option would be to extend the time allotted for examination. More research is needed to explore what other states are doing to assist examinees who have English as a second language.

The Board also discussed a critical provision of the state budget bill approved by the Governor and legislature on July 17. That provision requires licensing boards within the Department of Consumer Affairs to transfer the bulk of their reserve funds to the general fund, in an attempt to help balance the state's unprecedented budget deficit. The Board's vocational nurse program expects to lose \$1.2 million as a result of the transfer; the psych tech program stands to lose \$25,000.

#### FUTURE MEETINGS:

January 23-24 in San Diego.  
 March 12-13 in Los Angeles.  
 May 7-8 in Sacramento.  
 September 10-11 in San Francisco.



## BUSINESS, TRANSPORTATION AND HOUSING AGENCY

#### DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh  
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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 ex-

clusive 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 Divi-