



rently required to complete forty hours of Board-approved CE every two years to renew an active license.

The Exam Change Committee is still discussing the incorporation of other material into the licensing exam. The material for the state exam is presently drawn from Division 5, Title 22 of the California Code of Regulations. However, according to Ray Nikkel, there have been important statutory changes which are not a part of the regulations, but which are relevant to NH administration and should be part of the exam.

State agencies usually hold their public meetings in private hotels in the larger metropolitan areas. But pursuant to a recent Governor's directive, the Department of Consumer Affairs (DCA) is requiring all agencies to schedule their meetings in state-owned facilities; Business Services will not approve any exceptions unless they are in "the best interest of the public." The policy is in response to recent publicity regarding agency meetings in "plush resorts" at taxpayer's expense.

At BENHA's April meeting, Ray Nikkel noted that hotels in the various cities in which meetings are held, and in which board members must stay anyway, often provide meeting rooms for free or a nominal charge. He argued, for example, that any possible savings accrued during BENHA's April meeting at the San Diego State Building were lost in downtown parking fees and taxi fares. Further, many state facilities such as the State Building in San Diego are not as accessible to the public for the same reasons, and most people are more familiar with the hotel locations than state buildings. He also announced that many of the executive officers of other DCA agencies have sent a memo to the administration and DCA protesting the policy. However, he concluded that these arguments would probably be ineffective, since the policy had more to do with "public perception" than with reality.

FUTURE MEETINGS:

August 24 in Oakland.

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger
(916) 739-4131

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 per-

taining to the practice of optometry, which are codified in Chapter 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:

Foreign Graduates. Prodded by Senator Roberti's office, the Board continues to address the problems experienced by foreign optometric graduates seeking licensure in California. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 87-88; Vol. 9, No. 4 (Fall 1989) p. 73; and Vol. 9, No. 3 (Summer 1989) pp. 64-65 for extensive background information on this issue.)

At its February meeting, the Board unanimously approved a plan conceived and formulated by the Senator's office, which would establish a pilot program designed to provide remedial coursework and clinical work for graduates of foreign optometric schools. Approximately fifteen students are in immediate need of this program; all are located in southern California. Thus, Senator Roberti's office was attempting to negotiate an interagency agreement between the Department of Education and the Pacific Rim Extension Program at UCLA to set up the remedial pilot program in Los Angeles.

At the Board's May meeting, however, staff reported that the Los Angeles pilot program concept had been dropped due to complaints from the two existing California optometry schools that the program would eventually become a third school of optometry. Senator Roberti is now pursuing another option—an April 26 request for \$300,000 from the general fund to augment the Board's budget and enable the Board to contract for the development of a refresher course to be operated out of the Extension Program at UC Berkeley, where one of the existing optometry schools is located. Because the Extension Program is not a degree-granting entity, there is no concern that the program would evolve into another school of optometry. The course would be available to foreign optometric graduates, California optometric graduates who failed to pass the national or state licensing exams, and out-of-state optometric graduates who must pass the national exam in order to be licensed in California. Whether the full legislature

approves the \$300,000 augmentation for development of the course is a question which cannot be answered until the 1990-91 budget bill has passed.

In a related matter, Senator Roberti—who in 1987 carried legislation stripping the Board of its authority to deny a foreign-trained optometrist entrance to its examination—has now agreed to amend his SB 1104 to delay the effective date of that legislation until January 1, 1994. (See *infra* LEGISLATION.)

Board Rulemaking. At its February meeting, the Board held a public hearing on several proposed regulatory changes. First, the Board once again proposed to adopt new section 1570, to require that contact lens prescriptions contain descriptions of the optical and physical characteristics of the lenses and provide instructions for wear (e.g., "daily wear only"). (See CRLR Vol. 9, No. 2 (Spring 1989) p. 69 and Vol. 9, No. 1 (Winter 1989) p. 59 for background information on the Board's earlier attempt to adopt new section 1570.) The Board believes this regulation is necessary to enable consumers to distinguish between a prescription for eyeglasses and a prescription for contact lenses (such that they will not attempt to have contact lenses prepared from an eyeglasses prescription), and to enable consumers who see an optometrist and obtain a contact lens prescription to get that prescription filled elsewhere.

Several organizations opposed this proposal. Pearle, Inc., Pearle Vision-Care, Inc., Eye-Exam 2000, the California Association of Ophthalmology, and the California Association of Dispensing Opticians all argued that the proposal exceeds the Board's authority, and encroaches on the "dispensing" authority of registered dispensing opticians licensed under Business and Professions Code section 2542. The California Optometric Association (COA) objected because one consequence of the regulation may be that optometrists will be required to release contact lens prescriptions, while ophthalmologists will not be required to do so.

In response to these comments, Board members stated that they do not intend to affect opticians or to require release of contact lens prescriptions. Board member Morris Applebaum, OD, stated that this regulation should have no impact on opticians, because opticians are permitted to fit contact lenses only under the direct supervision of an optometrist or ophthalmologist. Board member Pamela Miller, OD, stated that the regulation is not intended to require



release of contact lenses; rather, when the optometrist elects to release a prescription, it merely requires him/her to issue a complete prescription so the consumer may have it filled without having to be refit. In the end, the Board took no action on proposed section 1570; at some time in the future, the Regulation Committee will attempt to redraft the language to clarify the Board's intent.

The Board also considered an amendment of section 1502 of its regulations, which would delegate to the Executive Officer specified powers and duties conferred by law on the Board. These powers and duties include the duty to receive and file accusations; issue notices of hearing and statements of issues; issue subpoenas; set and calendar cases for hearing; and other functions necessary to the businesslike dispatch of the business of the Board. This type of delegation of authority is standard operating procedure at almost all other agencies; Board legal counsel Robert Miller explained that the rationale underlying the delegation of authority is that a non-Board member should be the one to decide to bring disciplinary action and file accusations, reserving for the Board the ultimate decisionmaking authority.

COA and Pearle, Inc. opposed this proposed amendment. Both expressed concern that the Board would be "taken out of the loop." However, the Board adopted the amendment following the hearing; the rulemaking file still awaits review by the Office of Administrative Law (OAL).

Next, the Board considered an amendment to section 1510, which would state that the failure of an optometrist to inform the patient of the risks and benefits of the treatment prescribed and all alternative viable modes of treatment constitutes professional inefficiency. The Board decided not to adopt this amendment.

Finally, the Board considered the repeal of section 1535. The repeal would permit applicants for examination for licensure to take the Board's examination prior to successful completion of the National Board Examination in Optometry. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 87 for background information.) The Board took no action on this proposed regulatory change.

LEGISLATION:

AB 1462 (Klehs), as amended June 13, would require a health care service plan that provides one or more optometric services to provide an enrollee of the plan the opportunity to receive a com-

prehensive optometric examination, and would prohibit the plan from scheduling an examination for fewer than thirty minutes unless the optometrist determines in his/her professional judgment that the examination may be satisfactorily completed in fewer than thirty minutes. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

The following is a status update of bills described in detail in CRLR Vol. 10, No. 1 (Winter 1990) at page 88:

AB 2114 (Bane), which would have affected optometric examination qualifications, was dropped and reintroduced as *AB 3129*, which has died in committee.

AB 2198 (Klehs), as amended March 12, would require the Board to hold licensure examinations at least twice per year until January 1, 1994. This bill would state the intent of the legislature that the Board's examination be self-supporting, and would limit the use of examination fees to specified activities. This bill is pending in the Senate Business and Professions Committee.

AB 881 (Hughes), which would authorize the Board to require proof of completion of continuing education as a condition for license renewal, is still pending in the Senate inactive file.

SB 929 (Seymour), which would have affected mail order contact lenses, was substantially amended and no longer relates to optometry.

SB 1104 (Roberti). Under Business and Professions Code section 3057.5, the Board, for purposes of licensure in optometry, may refuse to honor a doctor of optometry degree awarded by a foreign university if the Board determines its instruction is not equivalent to that offered at colleges and universities in the United States; that authority ends on January 1, 1991, pursuant to the terms of *SB 1347 (Roberti)* (Chapter 1473, Statutes of 1987). As amended June 21, this bill would extend that authority until January 1, 1994. *SB 1104* is pending in the Assembly Ways and Means Committee.

LITIGATION:

On May 10, the U.S. Court of Appeals for the District of Columbia Circuit heard oral argument in *California State Board of Optometry v. Federal Trade Commission*, No. 89-1190, regarding the validity of the FTC's "Eyeglasses II" regulation, which would prevent state boards of optometry from prohibiting what has come to be called "corporate optometry." A decision is expected by September 1990.

(See CRLR Vol. 10, No. 1 (Winter 1990) pp. 88-89 for extensive background information on this issue.)

FUTURE MEETINGS:

August 13-14 in Sacramento.
November 29-30 in San Francisco.

BOARD OF PHARMACY

Interim Executive Officer:
Patricia Harris
(916) 445-5014

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 Chapter 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:

Regulatory Changes. The Board's regulatory program has had little success in the Office of Administrative Law (OAL) in the past several months. Although OAL, on January 18, approved the Board's new section 1710, which defines the term "inpatient hospital pharmacy" (see CRLR Vol. 9, No. 4 (Fall 1989) p. 75 for background information), it then proceeded to reject numerous regulatory packages.

-Foreign Graduates. Following an October 25 public hearing, the Board adopted new section 1720.1, which sets forth the criteria used by the Board in determining whether to authorize graduates of foreign pharmacy schools to take the pharmacist registration examination. The Board also added subsections (c) and (d) to section 1720, and amended existing section 1720(b); these changes provide specific time periods within