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 comprehensive 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

which applicants for the examination and applicants for registration must complete each application process. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 90 and Vol. 9, No. 4 (Fall 1989) p. 75 for background information.) On January 19, OAL rejected the package, on grounds that it failed to comply with the necessity, clarity, and consistency requirements in Government Code section 11349.1. The Board subsequently modified these sections and resubmitted them to OAL, which approved them on June 18.

-"Black Bag" Regulation. Also on October 25, the Board approved the proposed addition of new section 1751.10, which allows a pharmacist to carry and furnish, to a patient at home, dangerous drugs (except controlled substances) and devices for parenteral therapy (the intravenous administration of medication) when the dangerous drug or device is one currently prescribed for the patient, and the prescription has not been superseded by a different drug or device. OAL rejected that provision on January 8, concluding that the Board failed to demonstrate necessity and that it failed to comply with specified technical requirements of the Administrative Procedure Act (APA). The Board corrected the errors and resubmitted the provision; OAL approved it on June 15.

-Ancillary Personnel. On March 1, OAL rejected for a second time the Board's amendment to section 1717, which specifies the tasks which may be performed by an unlicensed person under the supervision of a licensed pharmacist. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 90 and Vol. 9, No. 4 (Fall 1989) p. 75 for background information.) OAL rejected this regulatory change primarily on grounds that it is inconsistent with numerous sections of the Business and Professions Code, which specify that only a licensed pharmacist may "dispense" drugs. OAL has trouble with several "packaging tasks" which the new rule would authorize unlicensed personnel to perform; it believes that these "packaging tasks" may be part of "dispensing" and are therefore non-delegable to persons who are not registered pharmacists or statutory exemptees. The Board strongly disagrees with OAL's interpretation; it plans to resubmit section 1717, but if OAL rejects it again, the Board plans to appeal to the Governor's office.

-Oral Consultation. On March 9, OAL rejected for a second time the Board's amendment of section 1707.1, which would require pharmacists to maintain patient medication profiles for all ongoing patient-consumers, and to provide an oral consultation to each patient or patient's agent, with specified exceptions. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 90 and Vol. 9, No. 4 (Fall 1989) p. 75 for background information.) This time, OAL rejected the regulatory package on clarity grounds; also, the Board failed to fully summarize and respond to all public comments on the proposed change, and to comply with all procedural requirements of the APA. The Board modified the language of the proposal and published it for a fifteen-day comment period which ended on May 19; at this writing, the Board is preparing the rulemaking package for resubmission to OAL.

-English Proficiency Examination. On April 18, OAL rejected the Board's amendment of section 1719, which would require that candidates for licensure who have been non-U.S. residents for more than ten years to take and pass the Test of Spoken English in addition to satisfying all other licensure requirements. OAL found that the proposed regulation failed to satisfy the clarity and necessity standards, and that the Board failed to comply with the procedural requirements of the APA. The Board plans to modify the language of section 1719, publish it for a fifteen-day comment period, and resubmit the section to OAL.

Preprinted Prescription Pads. At its January 31 and March 28 meetings, the Board continued its discussion of draft regulatory section 1717.3, which would define a "preprinted, multiple check-off prescription blank" and the permissible ways in which these may be used. At its March meeting, the Board approved draft language, and was scheduled to hold a May 31 hearing on the proposal, which would prohibit pharmacists (1) from dispensing any controlled substances on such preprinted blanks; and (2) from dispensing more than one dangerous drug from such a preprinted blank. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 90-91 for background information.)

Attorney General's Opinion. On April 18, the Attorney General's Office issued Opinion No. 89-1101, in response to a request by former Executive Officer Lorie Rice. The AG offered an interpretation of section 4046(c)(1) of the Business and Professions Code, which provides that neither the California Pharmacy Law nor any other law shall be construed to prohibit a registered pharmacist from furnishing to a prescriber a reasonable quantity of compounded medication for prescriber office use. The following terms were interpreted:

(1) "Reasonable quantity" means the amount of medication an ordinarily prudent pharmacist would believe likely to be used or dispensed by a physician in the particular circumstances of that physician, based on all the facts known to or which should reasonably be known to the pharmacist.

(2) "Compounded medication" does not include medication which the pharmacy repackages but does not reformulate or admix.

(3) "Prescriber office use" includes drugs which the prescriber dispenses to patients for administration outside the prescriber's office or clinic.

Dispensing by Emergency Room Physicians. At its January meeting, the Board adopted the following guidelines concerning the distribution of prescription medication by emergency room physicians. First, if medication is required after the pharmacist's business hours, an emergency room physician may distribute up to three doses of medication if it is properly labeled and is accompanied by a prescription. Second, an emergency room physician may distribute a full course of drug treatment if the medication is from the physician's personal stock and he/she complies with section 4051 of the Business and Professions Code. Third, an emergency room physician may dispense a full course of drug treatment if the patient's physician calls the emergency room physician and requests that the physician on duty dispense the medication. However, the physician on duty must examine the patient before he/she distributes the medication.

LEGISLATION:

AB 4168 (Hunter), as amended June 11, would require the Director of the Department of Health Services (DHS) to rely on drug product research, testing, information and formularies compiled by other states and other sources, as specified, when compiling the formulary of generic drug types and products that may pose a threat to the health and safety of patients receiving medication, if that medication is substituted by a pharmacist in lieu of a brand name drug prescribed by a prescriber. The bill would require that the formulary be mailed to in-state pharmacists. Under the bill, products listed as "Code A" in a specified publication issued by the U.S. Department of Health and Human Services could be substituted by pharmacists; if the drug product is designated as "Code B" in that publication, the pharmacist would be prohibited from substituting for the product unless he/she obtains permission from the physician. This bill is pending in the Senate Health and Human Services Committee.

SB 736 (Marks), as amended April 5, would require DHS to approve senior citizen medication education programs over the period July 1, 1991 to June 30, 1992 in up to six local health jurisdictions which have applied for funding under the bill, which would also set forth mandatory program components. It would also require DHS to report by December 31, 1992 to the legislature on effectiveness of the provisions of the bill, which is currently pending in the Assembly Ways and Means Committee.

AB 2064 Clute) makes it a misdemeanor to advertise the sale of anabolic steroids, unless the advertisement also states that possession or sale to an ultimate consumer is a crime punishable by a substantial fine and imprisonment. This bill was signed by the Governor on April 30 (Chapter 67, Statutes of 1990).

AB 3276 (Bronzan), as amended May 2, would require a pharmacist to attach a label or enclosure to the drug container whenever a prescribed drug has not been previously dispensed to the patient, or whenever the prescribed drug has been dispensed in a different dosage, form, strength, or with different written directions. This bill is currently pending in the Senate Business and Professions Committee.

AB 3975 (Margolin), as amended June 6, would require the Board to designate a statewide drug information center to provide direct telephone assistance or referral to appropriate health care providers for any person desiring information relating to prescription drugs. The bill would provide for a voluntary contribution check-off on the form for the renewal of a nongovernmental pharmacy and a pharmacist's license, and would increase the renewal fee for an out-of-state distributor's license; and would provide for the deposit of that increased fee money into the Drug Information Account to be created by this bill. This bill is pending in the Senate Business and Professions Committee.

AB 4106 (Polanco), as amended May 7, would provide that a person exempt from the Pharmacy Licensing Law must be present any time a person is seeking a fitting or consultation on a medical device, except that an exemptee need not be present if the dangerous devices are stored in a secure locked area as specified. The bill would also provide that pharmacists are not prohibited from performing certain procedures or functions involving nonlegend medical devices. This bill is pending in the Senate Business and Professions Committee.

SB 1829 (Watson), as amended May 1, would authorize DHS to authorize a pilot project in the City and County of San Francisco. Under the project, when it is determined that a disease is life threatening and the spread is substantial, the local health officer would be authorized to take all measures that the officer deems appropriate to prevent the further spread of the disease. This bill would require a local health officer who develops new innovative programs, or undertakes new measures to prevent the further spread of disease, to establish protocols approved by DHS, and to annually report to the legislature and DHS on specified aspects of that action. The bill would express legislative intent, and the provisions would be operative for twelve months from the date DHS approves the pilot program. This bill is currently pending in the Senate inactive file.

AB 2713 (Moore), as amended April 30, would require manufacturers of nonprescription drugs sold in California to evaluate, and permit them to modify, the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense. The Nonprescription Drug Manufacturers Association would be required to report on a quarterly basis to and seek advice periodically from DHS and an advisory committee appointed by the DHS Director regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information. This bill is pending in the Senate Committee on Health and Human Services.

SB 2827 (Roberti), as amended April 26, would require the Board to encourage every licensed pharmacist to take a course in geriatric pharmacology as part of his/her continuing education requirements. This bill is pending in the Assembly Health Committee.

The following is a status report on bills discussed in CRLR Vol. 10, No. 1 (Winter 1990) at page 91:

AB 1006 (Isenberg), as amended May 14, would require a health care service plan or a nonprofit hospital service plan to give written notice to all pharmacy providers in their service area of their intent to contract for, or change the manner of payment for, the delivery of pharmacy services, and to give those providers an opportunity to submit a bid to participate in the plan's panel of providers. The bill is currently pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1177 (Kelley) would require a pharmacist to inform a patient either orally or in writing of the harmful effects of a drug dispensed by prescription, if the drug poses substantial risk when taken in combination with other prescribed drugs known to the pharmacist as having been dispensed to that patient. This bill is currently pending in the Senate Business and Professions Committee.

FUTURE MEETINGS:
October 3-4 in Santa Clara.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Executive Officer: Darlene Stroup
(916) 920-7466

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 Chapter 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.