



REGULATORY AGENCY ACTION

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 non-prescription 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.



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.

Governor Deukmejian recently appointed two new members to the Board: public member George Warriner and electrical engineer Richard Johnson. Board member Donald Beck, a safety engineer, announced in April that he will not seek reappointment.

MAJOR PROJECTS:

Regulatory Determinations. The Office of Administrative Law (OAL) recently issued two regulatory determinations concerning PELS in the *Notice Register*. The two requests for determination which resulted in these decisions both asked OAL to determine whatever certain Board policies are in fact "regulations" which must be formally adopted by the Board pursuant to the Administrative Procedure Act (APA). In both instances, OAL concluded that the APA is applicable to the Board's quasi-legislative enactments; that the challenged policies are in fact "regulations" within the meaning of Government Code section 11342; and that the policies in issue may not be enforced until properly promulgated under the APA.

In a February 8 determination (Docket No. 89-009), OAL addressed PELS' policy of prohibiting fire protection engineers from performing design services generally, and from designing fire protection systems specifically (such as fire sprinkler systems), because such activity falls within the scope of practice of civil, electrical, or mechanical engineers. OAL determined that PELS' policy is a "regulation" as defined by Government Code section 11342(b) and must be adopted in compliance with the APA. In *dicta*, OAL implied that PELS' enabling statute is anything but clear, and noted that nothing in statute or regulation authorizes practice engineers to design fire protection systems. (See *supra* agency report on OAL for further information on this regulatory determination.)

OAL's February 14 determination

(Docket No. 89-010) concerns the Board's policy of requiring candidates to complete one year of "party chief" experience prior to qualifying for the "second division" land surveyor examination. OAL determined that the Board's current regulations do not equate "reasonable field training" with "party chief" experience, although the Board interprets section 8742 of the Business and Professions Code that way. Therefore, since the Board's policy is a rule or standard of general application which implements or interprets a specific Code section, it must be adopted as a regulation.

On April 13, OAL published notice of another request for regulatory determination in the *Notice Register*. The request was filed by James Corn of the law firm Turner and Sullivan in Sacramento. Mr. Corn is an attorney and lobbyist for the California Council of Civil Engineers and Land Surveyors (CCCELS). OAL has been requested to determine the validity of a PELS policy which requires registered civil engineers who seek land surveyor licensure to have one year each of responsible field training and responsible office training in order to satisfy the experience requirement for licensure. Section 8742(a)(1) of the Business and Professions Code requires land surveyor applicants with a four-year degree to have "two years of actual experience in land surveying, including one year of responsible field training and one year of responsible office training." Section 8742(a)(3) arguably provides an alternate route to licensure for those candidates who are already registered civil engineers: it requires "two years of actual experience in land surveying." PELS interprets these two sections to mean the same thing. OAL was expected to release its determination on this issue in late June.

Regulatory Changes. On March 30, OAL approved the Board's amendments to regulatory sections 443 (inspection of examinations) and 444 (examination appeals). On June 13, OAL approved PELS' change to section 407, which adjusts a number of the Board's fees. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 92 for background information on these changes.)

Licensing Examination. PELS recently awarded a contract for development of the California Special Five Examinations to Price and Associates. The exam will include sections on control systems, corrosion, quality, safety, and traffic. At a subsequent meeting, PELS adopted the recommendation of its Administrative Committee to use test

development and grading of the California Special Five Examinations as a pilot program to explore the development of objectively scored examinations with potential for machine scoring and electronic test administration. In 1989, the National Council of Examiners in Engineering and Surveying (NCEES) notified the Board it would no longer provide these examinations; it also denied the Board's request to include these subjects in its national Principles and Practices of Engineering examinations. The five disciplines involved have very small candidate populations. PELS feels that subjectively scored design item examinations would require extensive expert time for examination development, grading, and cut-score development; this makes subjective examinations cost-prohibitive for these five Title Act disciplines.

Bridge Design Discipline. PELS has decided to hold informational hearings to provide a public forum for discussion of the recommendation of its Structural Engineering Technical Advisory Committee (SETAC) that a separate bridge design discipline be created. This proposal was initiated in the wake of the October 1989 Loma Prieta earthquake. Public comment at the Board's March 9 meeting in Sacramento ran against the proposal. Representatives of both CCCELS and Professional Engineers in California Government spoke in opposition to the creation of a separate licensing scheme for California bridge designers. The Board referred the issue to its Exam/Qualifications Committee, which met on March 27. The Committee dealt with two questions raised by the proposal; first, it discussed the role the Board should play in initiating legislation; second, it addressed whether engineers fully discharge their duties by designing to the Code. The Committee decided to recommend that public hearings be held on these issues. PELS adopted this recommendation at its April 27 meeting in San Diego. CalTrans and the legislature are independently addressing some of the bridge design/seismic safety issues raised by SETAC's proposal. (See *infra* SB 2104 (Kopp) in LEGISLATION.)

Civil Engineer Comity. Pursuant to an agreement with the Washington State Board of Registration for Professional Engineers and Land Surveyors (see CRLR Vol. 10, No. 1 (Winter 1990) p. 92 for background information), PELS has been seeking an author for legislation which would exempt pre-1988 comity registrants seeking California licensure in civil engineering from the seismic principles and engineering sur-



veying exams. The practical effect of this legislation would be to "grandfather" most comity applicants past the special California competence requirements in effect since 1985. Numerous attempts by PELS to find an author for this legislation have failed. The perceived unpopularity of relaxing seismic exam requirements soon after a major earthquake may be part of the Board's problem in finding an author. Pursuing its side of the agreement, Washington is seeking sponsorship for legislation to be introduced during the 1991 session of its legislature which would relax its current strict reciprocity licensing law. Washington has also implemented a Special Civil Exam requirement for pre-1988 California civil engineers seeking licensure in Washington. This exam was administered for the first time on April 20.

Land Surveyor Comity. At its April 27 meeting, PELS adopted a proposal which substantially changes the requirements for land surveyor comity. Previously, out-of-state experience and licensed land surveyors were required to pass a take-home, state-specific comity exam. Now, those out-of-state candidates must take the California eight-hour second division Land Surveyor Examination, the same exam given to unlicensed land surveyors-in-training. This change took effect on July 1, 1990. PELS justified the heightened requirement by citing its determination that NCEES' multiple-choice exam is not equivalent to the California state-specific essay exam.

LEGISLATION:

SB 2104 (Kopp), introduced February 21, requires the Department of Transportation to prepare an inventory of all state-owned bridges which require strengthening or replacement to meet specific seismic safety standards and to prepare a multi-year plan and schedule, together with cost estimates for completing the retrofitting or replacement of all those bridges. The bill requires that this information be submitted to the Governor and legislature by January 1, 1991, and declares the legislature's intent to appropriate funds necessary to carry out the requirements of the bill. This bill has been signed by the Governor (Chapter 265, Statutes of 1990).

AB 2537 (Burton) would create the Crane Operators' Licensing Board, consisting of three appointed members, and would make it a misdemeanor for any person to operate a crane without having a license issued by the Board, with cer-

tain exceptions. The bill would require the Board to investigate, classify, and qualify applicants for a license to operate a crane by written and practical examination, and would require the Board to issue a license to applicants meeting specified qualifications without examination. This bill would permit Cal-OSHA's Division of Occupational Safety and Health to collect fees as fixed by the Board for the examination and licensing of crane operators as necessary to cover the actual costs, including administrative costs, and would require that these fees be deposited in the Crane Operators Licensing Account, which is created by the bill for the administration of the crane operators licensing program. The Board would be required to investigate complaints against licensees and take action against any licensee committing acts or omissions which are specified as causes for disciplinary action, and would specify the term and procedure for renewal of a license. The bill would also permit the chief of the Division or any taxpayer to apply to the superior court for an injunction restraining a person from acting in the capacity of a crane operator when it appears that the person is doing so without a license. This bill is pending in the Senate Industrial Relations Committee.

AB 3395 (Eastin), as amended April 30, would include within the definition of civil engineering and land surveying the creation, preparation, or maintenance of electronic or computerized data in the performance of civil engineering or land surveying. The bill would specify that the civil engineer's required stamp, seal, and signature on specified documents shall be original and shall not be a computer-generated copy, photocopy, or facsimile transmission of the original, with specified exceptions. This bill is pending in the Senate Business and Professions Committee.

AB 3590 (Farr), as amended May 22, would create a Geographic Information Task Force, composed of fifteen members, to be convened by the Teale Data Center. The task force, which would be terminated on March 1, 1992, would be required to submit a report containing specified minimum recommendations to the Governor and the appropriate committees of the legislature by January 1, 1992. This bill is pending in the Senate Governmental Organization Committee.

AB 3781 (Chandler), as amended May 14, would add a provision to the Professional Engineers Act stating that no regulation, standard, code, ordinance, or policy may be adopted by any public agency which restricts or limits the scope of practice of any registered pro-

fessional engineer. This bill, which would make a declaration of legislative intent, is pending in the Senate Business and Professions Committee.

AB 4138 (Eaves), as amended May 25, would revise section 8726 of the Business and Professions Code to exempt officers and employees of electrical corporations, as defined, whenever they prepare legal descriptions of an electric utility line easement. This bill is pending in the Senate Business and Professions Committee.

SB 1922 (Davis), as amended May 30, would provide that the prohibition against indemnifying a promisee against liability for damages arising from actions of the promisee or the promisee's agents, servants, or independent contractors, does not prevent an agreement, other than an agreement by a public entity, to indemnify a professional engineer or geologist or the agents, servants, independent contractors, subsidiaries, or employees of the engineer or geologist from liability in providing identification, evaluation, preliminary assessment, design, remediation services, or other specified services in connection with defined hazardous materials described in specified provisions of state and federal law, if certain criteria are met. However, the indemnification permitted would be valid only for damages arising from, or related to, subterranean contamination or concealed conditions, and would not be applicable to at least the first \$250,000 of liability. Also, indemnification would not be permitted for willful misconduct or gross negligence. This bill is pending in the Assembly Judiciary Committee.

SB 1964 (Greene, L.), as amended May 24, would provide that a registered civil engineer may also practice or offer to practice construction project management services in either the public or private sector. This bill is awaiting hearing in the Assembly Committee on Government Efficiency and Consumer Protection.

SB 2032 (Greene, L.). Existing law provides that a certificate of registration or authority of an engineer, or the license of a land surveyor, may be renewed within five years after its expiration by meeting specified conditions, including payment of the renewal fee in effect on the last renewal date. As amended June 7, this bill would require, instead, that all accrued and unpaid renewal fees be paid as a condition for the renewal of a certificate or license. Where a license has not been renewed within five years, the registrant or certificate holder may pay all the fees required as if he or she were applying



for the certificate for the first time; or, if the registrant or certificate holder has been practicing with an expired or delinquent license and has the examination requirement waived, he/she shall pay all accrued and unpaid renewal fees. Finally, this bill would require the Board to establish by regulation a fee for an appeal from an examination by applicants for a license issued by the Board, in an amount not to exceed the costs incurred by the Board. This bill is pending in the Assembly Ways and Means Committee.

SB 2503 (Leonard). Existing law provides that a civil engineer may engage in land surveying unless he/she was registered after January 1, 1982, in which case he/she must take a part of the land surveyor examination and obtain a land surveyor's license. As amended April 30, this bill would provide that this provision shall not be construed to prohibit a civil engineer acting in the capacity of a city engineer from completing certificates required of a licensed surveyor by the Subdivision Map Act, regardless of the date of his/her registration. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

The following is a status update on bills reported in CRLR Vol. 10, No. 1 (Winter 1990) at pages 92-93:

SBX 16 (Roberti) and **ABX 24 (Eastin)** are twin bills aimed at preventing the victimization of persons suffering property damage in the Loma Prieta earthquake, by making offenses by unlicensed architects, engineers, or contractors punishable as either a misdemeanor or a felony, as specified. **SBX 16**, amended January 4, is pending in the Senate Appropriations Committee. **ABX 24** was dropped by its author and reintroduced by Assemblymember Epple as **ABX 9**. As amended May 8, the new bill has the same prohibitive language as **ABX 24** had, but additionally proposes to double the amounts of fines which may be imposed for certain offenses under those circumstances; require the defendant to make full restitution subject to the defendant's ability to pay; add a one-year enhancement where the offense is a felony and the defendant has a prior felony conviction of such an offense; and require probation of at least five years or until restitution is made. This bill is currently pending in the Senate Appropriations Committee.

SBX 24 (Alquist), as amended January 4, would impose on the Seismic Safety Commission a requirement to conduct an investigation of the Loma Prieta earthquake of October 17, 1989.

This bill is currently in the Senate Appropriations Committee.

SBX 46 (Lockyer), as amended January 4, would grant limited immunity to architects or engineers providing voluntary, uncompensated structural inspection services at the scene of a declared emergency caused by a major earthquake, within thirty days of the earthquake, at the request of a public official, public safety officer, or city or county building inspector acting in an official capacity. This bill is pending in the Assembly Judiciary Committee.

AB 1789 (Cortese) would give architects, engineers, and land surveyors a design professional's lien on real property for which a work of improvement is planned, and for which a specified governmental approval is obtained. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1748 (Chandler) amends Business and Professions Code section 8750 to allow licensed land surveyors to use a seal bearing the title "Professional Land Surveyor" and which may contain the expiration date of the license. This bill was signed by the Governor on May 22 (Chapter 109, Statutes of 1990).

AB 1162 (Ferguson), which would have amended section 66448 of the Government Code to require that parcel maps be prepared on the basis of a land survey performed pursuant to the Professional Land Surveyors' Act, and would have permitted a parcel map to be compiled from filed or recorded data only when sufficient survey information existed on the filed maps to relocate and retrace the exterior boundary lines of the parcel map, was dropped by its author.

LITIGATION:

On February 2, thirteen civil engineers filed suit against PELS in *Floyd E. Davis, et al. v. Department of Consumer Affairs, et al.*, No. 512457 (Sacramento County Superior Court). The lawsuit asks the court to declare some of the Board's recently adopted structural engineering regulations illegal. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 76-77; Vol. 9, No. 3 (Summer 1989) p. 68; and Vol. 9, No. 1 (Winter 1989) p. 62 for background information.)

The background for this suit is the ongoing "turf battle" between the disciplines of structural and civil engineering. Civil engineers may, by law, practice structural engineering. PELS previously had regulations in place which allowed civil engineers to serve as references for structural engineering candidates, and allowed structural engineer candidates to obtain qualifying experience for structural plan-checking per-

formed under the supervision of a civil engineer. The Board, however, had been enforcing a different policy. PELS' policy was that only structural engineers could serve as references for structural engineering candidates; additionally, only plan-checking experience obtained under the supervision of a structural engineer constituted valid qualifying structural experience. Over the course of five years, PELS tried to transform this policy into a regulation, but could not obtain the necessary OAL approval. A request for regulatory determination (Docket No. 89-016) was filed with OAL by plaintiffs' attorneys, challenging the Board's policy as an "underground regulation". Before OAL reached a determination on the request, however, it finally approved a regulatory package from PELS which contained the challenged policy (see CRLR Vol. 9, No. 4 (Fall 1989) at p. 77 for background information). On March 16, 1990, the *Notice Register* contained a notice of withdrawal of the request for determination, because OAL's approval of the regulations mooted the "underground regulation" challenge.

Plaintiffs' complaint alleges that the regulations are not authorized by and are inconsistent with state law, and violate constitutional mandates. PELS filed a demurrer to the suit, which was heard and denied on April 26. PELS subsequently filed its answer. Deputy Attorney General Pamela D. Gorin is handling the case on behalf of PELS.

RECENT MEETINGS:

At its April 27 meeting in San Diego, PELS considered a petition for rulemaking filed by the Center for Public Interest Law (CPIL). The Board was asked to consider adopting a rule which would bring the billing practices of its registrants within its enforcement and disciplinary powers on more than a case-by-case basis. CPIL contends that it is widespread practice among Board registrants to violate contracts and engage in misrepresentation in billing practices. The prevalence of this problem warrants adoption of a rule that will give registrants and their customers clear guidelines as to their respective rights and duties. PELS declined to adopt such a rule, stating that while this matter raises civil issues falling outside the Board's responsibility, PELS is not precluded from consideration of individual discipline cases involving questionable billing practices.

FUTURE MEETINGS:

September 14 in San Diego.
November 2 in San Francisco.