



(Summer 1988) p. 71 for background information.) During that three-year period, a total of four NHAs had their licenses revoked; seventeen NHAs had their licenses suspended for a period of time ranging from thirty days to one year, and were subsequently placed on probation; and two NHAs were placed on probation.

## RECENT MEETINGS:

At BENHA's June 12 meeting, Ray Nikkel reported that he and Board Chair Doug Troyer attended a meeting of the National Association of Boards of Examiners for Nursing Home Administrators (NAB). Of major concern to NAB members was the status of proposed federal regulations outlining certification standards for NHAs, which were to be released by the Health Care Finance Administration this fall. NAB is also conducting a study of nursing home administrators to determine the elements which are necessary to be successful in that position. This study is conducted every five years; the results are used as a guide in the development of the national NHA examination.

Also at the June 12 meeting, the Board discussed the quarterly meeting between BENHA and the American College of Health Care Administrators. The two groups discussed ways to evaluate BENHA's administrator-in-training program; specific proposals for improving the program are scheduled to be presented at the next BENHA meeting. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 112 for background information.)

BENHA's August 24 meeting was cancelled.

## FUTURE MEETINGS:

To be announced.

## 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 pertaining 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 unsatis-

factory 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.** In the 1990-91 budget bill signed on July 31, the legislature allocated \$300,000 from the Board's reserve fund to be used to develop a refresher course for graduates of foreign optometric schools. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 113; Vol. 10, No. 1 (Winter 1990) pp. 87-88; and Vol. 9, No. 3 (Summer 1989) pp. 64-65 for extensive background information.)

The money will be allocated directly to the University of California, which will develop the program of remedial coursework. The program will be developed through either the Berkeley or Los Angeles campus of the UC system. The refresher course, once developed, will probably be offered in Los Angeles; the majority of foreign optometric graduates needing remedial training live in the Los Angeles area. The Board expects to work closely with the University of California in the development of this program.

## LEGISLATION:

The following is a status update on bills discussed in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at page 114:

**AB 1462 (Klehs)**, as introduced, would have required health care service plans that offer optometric services to provide a comprehensive optometric examination. The bill also would have prohibited the plan from scheduling examinations for fewer than thirty minutes unless the optometrist determines that the examination may be satisfactorily completed in fewer than thirty minutes. On August 14, the bill was substantially amended and would have required the Department of Corporations to conduct an investigation into the practices of health care service plans to determine whether the practice of scheduling appointments for less than thirty minutes is sufficient for an appropriate and comprehensive optometric examination. This bill was vetoed by the Governor on September 26.

**AB 2198 (Klehs)**, as amended March 12, would have required the Board to hold licensure examinations at least twice per year until January 1, 1994, and would have limited the use of examination fees to activities related to the license examination. This bill died in the Senate Business and Professions Committee.

**AB 881 (Hughes)**, which authorizes the Board to require proof of completion of continuing education as a condition for license renewal, was signed by the Governor on September 26 (Chapter 1382, Statutes of 1990).

**SB 1104 (Roberti)**, as amended June 21, extends until January 1, 1994, the Board's authority to 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. This bill was signed by the Governor on September 4 (Chapter 583, Statutes of 1990). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 113; Vol. 10, No. 1 (Winter 1990) pp. 87-88; and Vol. 9, No. 4 (Fall 1989) p. 73 for background information on this issue.)

## LITIGATION:

On August 28, the U.S. Court of Appeals for the District of Columbia Circuit dealt a severe blow to "corporate optometry" by striking down the Federal Trade Commission's (FTC) ruling known as "Eyeglasses II" in *California State Board of Optometry v. Federal Trade Commission*, No. 89-1190 (D.C. Cir. Aug. 28, 1990). (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 88-89 for extensive background information on this case.) The "Eyeglasses II" ruling, which attempted to prevent state boards of optometry from prohibiting corporate optometry, was the result of an FTC investigation into state regulations which favor the practice of optometry by the sole practitioner over optometric practices owned by corporations. The FTC study suggested that state restrictions on corporate optometry have resulted in higher-priced eye care which is not necessarily higher in quality.

The court of appeals did not decide the merits of the FTC's "Eyeglasses II" ruling. Instead, the court viewed this case as raising issues of federalism: the court held that the FTC lacks the authority to issue a ruling which abridges the powers of the states. The court reasoned that Congress did not intend to authorize the FTC to limit states in their sovereign capacities. The FTC's ruling, according to the court, would change the balance of power between the federal government and the states. The court vacated the FTC rule as an improper extension of federal power in the absence of a congressional mandate.

This decision will likely have a nationwide impact on the practice of corporate optometry. Unless reversed on appeal, state boards of optometry will be



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permitted to continue adopting regulations which favor the sole practitioner over the optometry chain/franchise. Optometry chains will likely push for state legislation to loosen the restrictions on corporate optometry.

## RECENT MEETINGS:

At its August 13 meeting, the Board discussed a draft legislative proposal to increase license and examination fees to cover the costs of these operations; currently, the fees cover one-fourth of the costs. The Board also discussed a proposal to regulate the retention of optometric records; currently, no statute requires the retention of optometric records.

The Board discussed the initiation of an educational program to control the practice of optometry by unlicensed individuals. The Board indicated concern about optometric students who begin working in an optometry practice before receiving a license. Traditional enforcement has not been effective in curtailing unlicensed practice. The Board therefore decided to issue a memorandum to optometrists reminding them that individuals who have not yet received a license may not practice optometry, even if supervised by a licensed optometrist.

The Board's legal counsel issued a clarification on the practice of optometry in rest homes. Mobile practice is prohibited; however, an optometrist may make a house call to his/her own immobile patient.

The Board has completed a consumer pamphlet; however, as of its August 13 meeting, the Board had not yet found funds for publication. The Board expects to publish a newsletter to its own licensees by the end of 1990.

## FUTURE MEETINGS:

To be announced.

## BOARD OF PHARMACY

*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.

At its May 30 meeting, the Board announced that Patricia Harris has been selected as its new Executive Officer.

## MAJOR PROJECTS:

*Investigation of Revenue Enhancement Programs Between Physicians and Home IV Providers.* The Board has appointed a special committee to investigate the financial relationships between physicians and home infusion companies. Although home infusion companies are not specifically licensed by any state agency, these relatively new service companies contract with pharmacists, as well as other licensed professionals, to provide in-home intravenous (IV) therapy to specified patients. Only a pharmacist may supply medications to IV patients on an ongoing basis; thus, the pharmacist is an integral part of the home IV therapy process.

It has come to the attention of the Board that various "revenue enhancement" or kickback schemes exist between referring physicians and home infusion companies. Business and Professions Code sections 650 and 651 prohibit compensation or financial inducements to physicians for referrals, unless certain criteria are met. Further, the U.S. Inspector General is proposing various "safe harbor" regulations, which specify the types of financial arrangements which are permissible without fear of kickback prosecution. However, based on concerns expressed by pharmacists participating in the home infusion industry, the Board believes that certain "revenue enhancement programs" amount to kickback violations.

The three most common financial arrangements known to exist between physicians and infusion companies are as follows: (1) the infusion company is a limited partnership in which physicians buy shares as limited partners and share in the profits; (2) a joint venture operation is created, which includes various physicians as members of the joint ven-

ture; the physician contributes little to the initial capitalization of the company, but shares in a periodic division of the profits; and (3) the patient's physician acts as a "consultant" without ever actually visiting the patient at home. The infusion company then provides the medication and bills the patient or the patient's insurance company. However, payment goes directly to the physician, who deducts up to 30% as a "consulting fee" and forwards the remainder to the infusion company. Much concern has been raised over whether any legitimate services are rendered by a physician as a consultant, particularly when the physician never actually visits the patient personally for these "consulting" services. Under current hospital practices, the physician must personally visit the patient in order to be financially compensated, even if the physician is supervising the treatment. The home infusion situation is comparable to the hospital in terms of the service being rendered and the standards for compensation.

The Board of Pharmacy's major concern is that these financial relationships are not in the best interest of the patient. When there is a direct financial benefit at stake, the physician may be less inclined to prescribe an equally appropriate therapy which would cost less to the patient. Due to the rapid increase in the home IV industry in recent years, the Board is concerned that many patients are receiving home IV antibiotics when oral antibiotics would be appropriate. The Board's special committee has identified three major areas of focus for its investigation: (1) Is there any harm to the patient? (2) Are these practices in the best interest of patient care? (3) Do they interfere with freedom of choice in selecting health care?

In addition, the committee will address the following issues:

- examination of section 650 of the Business and Professions Code for interpretation and possible amendment, and review of the proposed "safe harbor" regulations;

- clarification of existing laws that regulate the home IV provider industry (including proposed regulations that will be submitted to the Department of Health Services for the licensure of Home Health Agency/Home IV Drug Therapy Providers);

- identification of legitimate services and financial arrangements, including a focus on the following: (a) impact on patient care, (b) review of existing reimbursement enhancement programs and clarification of known types of arrangements, (c) identification of legitimate