



# REGULATORY AGENCY ACTION

limit abuses among those firms which place individuals in a variety of employment positions. It prepares and administers a licensing examination and issues several types of licenses upon fulfillment of the Bureau's requirements. Approximately 900 agencies are now licensed by the Bureau.

The Bureau is assisted by an Advisory Board created by the Employment Agency Act. This seven-member Board consists of three representatives from the employment agency industry and four public members. All members are appointed for a term of four years. As of this writing, seats for one public and two industry members remain vacant.

## LEGISLATION:

Two bills which could abolish the Bureau have been introduced into the state legislature. *AB 2113 (Johnson)*, as introduced, would simply abolish the Bureau at the end of 1989. *SB 1673 (Montoya)*, as introduced, would make minor changes to the Employment Agency Act, but Senator Montoya's office says the bill probably will be amended to include a provision abolishing the Bureau. A third bill, *AB 2469 (Johnston)*, would continue the present deregulation of employer-paid agencies beyond the current 1991 sunset date.

Both Assembly bills are supported by the California Association of Personnel Consultants (CAPC). CAPC is the private industry group which is largely responsible for the present deregulation of employer-paid agencies. Deregulation is the result of AB 2929 (Chapter 912, Statutes of 1986), a CAPC-sponsored bill which took effect on July 1, 1987. AB 2929 removed employer-retained agencies from the Bureau's oversight. The number of licensees regulated by the Bureau decreased as a result. Since the Bureau receives all of its funding from its licensing fees, the Bureau suffered a 60% decline in its funding as a result of deregulation. (For more information on the effects of AB 2929, see CRLR Vol. 9, No. 1 (Winter 1989) p. 59 and Vol. 8, No. 4 (Fall 1988) p. 68.)

CAPC continues to favor the deregulation which occurred under AB 2929. That bill contained a sunset provision which automatically returns employer-paid agencies to the Bureau's jurisdiction on January 1, 1991 unless AB 2929 is extended. AB 2469 would delete the sunset date, and, according to Peter Cooley of Assemblymember Johnston's office, AB 2469 has no connection with the bills to abolish the Bureau. At this writing, AB 2469 is pending in the Assembly

Committee in Governmental Efficiency and Consumer Protection.

The Bureau's budget shortfall, combined with the deregulation of employer-paid agencies, has left the industry in a volatile condition. According to an article in the February 1989 CAPC *Inner View* newsletter, "'Free enterprise' was the cry, but anarchy is the result." The article also states that CAPC is developing legislation to create the first responsible, mandatory self-regulation system in the country. The office of James Randlett, CAPC's lobbyist, says CAPC is awaiting the language of proposed amendments to AB 2113 before it announces an official position on the bill. Those amendments are being prepared by the DCA, which believes that any effort to abolish the Bureau must be coupled with alternate remedies for consumer protection. DCA will announce the specific language of its proposals after it receives approval from the Governor's office. At this writing, AB 2113 is pending in the Assembly Government Efficiency and Consumer Protection Committee.

Michael Gomez of Senator Montoya's office says SB 1673 is a spot bill which will be amended to compete with AB 2113 if the Assembly bill with the DCA amendments fails to adequately protect the interests of consumers. SB 1673 is pending in the Senate Business and Professions Committee.

Bureau Chief Jean Orr claims that, in addition to wanting a self-regulated industry, CAPC also favors shifting the industry toward larger agencies and toward employer-retained agencies.

As of this writing, annual voting membership in CAPC costs an employment agency \$298, which includes \$24 for CAPC's Political Action Committee. In addition, CAPC claims to have given over 2,700 exams to managers, owners, and consultants, certifying them as "certified employment specialists." This certification is given by the California Institute for Employment Counseling (CIEC), a part of CAPC which was founded in 1958. The exam costs \$75, including a tutoring session, and study materials cost an additional \$50. CAPC reports that 84% of all who take the exam pass.

According to the October 1988 CAPC reporter, DCA officials have requested CAPC to consider, with regard to industry self-regulation, the following: (1) mandatory arbitration in the event of a fee dispute; and (2) the accreditation of consultants. CAPC describes corollary issues of (2) above as whether the CIEC should be separately chartered to administer such a program, and whether CAPC

should sponsor legislation requiring the accreditation of consultants by CAPC as a prerequisite to continued employment in the industry.

## FUTURE MEETINGS:

To be announced.

## BOARD OF PHARMACY

*Executive Officer: Lorie G. Rice*  
(916) 445-5014

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. 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:

*Examination Changes.* At the January meeting in San Diego, there was no public comment on the proposed amendments to section 1724 of Chapter 17, Title 16 of the California Code of Regulations (CCR). (See CRLR Vol. 9, No. 1 (Winter 1989) p. 66 for background information.) These changes would streamline the format of the examination by eliminating subsections and would decrease the time of the examination from the current 14 hours to a nine- or ten-hour period. The content tested would remain the same and the candidate would be required to achieve a score of 75 under the new format. The amended regulation was submitted to the Office of Administrative Law (OAL) in March.

*Pharmacy Technician Regulation.* The Board has encountered "roadblocks" to the introduction of legislation which would create a new category of pharmacy technicians. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 60 and Vol. 8, No. 4 (Fall 1988) p. 70 for background information.) As an alternative measure, the



Board discussed proposing amendments to section 1717(c) of the CCR, which would allow nonlicensed personnel to perform tasks under a pharmacist's direct supervision. The proposed regulation would also add an explicit list of tasks which may be performed only by a licensed pharmacist. While not creating the category of pharmacy technician *per se*, these regulatory changes would permit the increased use of nonlicensed personnel in pharmacies. A public hearing on the proposed regulation was scheduled for the May Board meeting.

## LEGISLATION:

**AB 229 (Polanco)**, which would restrict the distribution, possession, and use of hypodermic needles and syringes, is pending in the Senate Business and Professions Committee.

**AB 102 (Filante)** would amend the existing law which created a Legislative Task Force on Medication Misuse to design a model medication program and a brochure. This bill specifies that the required brochure must be a "sample" brochure, and would delete the requirement that the model program seek and train volunteers through the solicitation of private funding. AB 102 is pending in the Assembly Ways and Means Committee.

**AB 1006 (Iserberg)** would add section 1366.5 to the Health and Safety Code and section 11515.7 to the Insurance Code, affecting health maintenance organizations (HMOs) and their contracts with pharmacies. Currently, many HMOs contract with only one pharmacy chain for services for all their beneficiaries. This bill would require the HMO to allow non-contracting pharmacies to provide services to beneficiaries and to be paid an amount equal to the contract payment. This bill is currently pending in the Assembly Health and Workers Insurance Subcommittee.

**AB 1986 (Ferguson)** would add sections 11210.1 and 11210.2 to the Health and Safety Code, which prohibit prescribing controlled substances to minors without the written consent of parents or guardians. The proposed legislation would create felony criminal and civil penalties for a violation. This bill is pending in the Assembly Judiciary Committee.

**AB 1729 (Chandler)** would amend section 584 and add sections 123 and 496 to the Business and Professions Code. These changes would increase the penalties for subversion of a licensing examination to include misdemeanor criminal charges and liability for costs up to \$10,000. This bill is pending in the

Assembly Ways and Means Committee.

**AB 1591 (Condit)** would amend section 1056 of the Health and Safety Code to include anabolic steroids on the list of controlled prescription substances. This bill is pending in the Assembly Public Safety Committee.

**AB 1397 (Filante)** would add section 4040 to the Business and Professions Code to require initial consultation by a pharmacist when a prescription is filled. This bill is pending in the Assembly Health Committee.

## RECENT MEETINGS:

At its January meeting, the Board discussed the formation of the subcommittee on the scope of pharmacy practice. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 61 for background information.) The subcommittee currently includes three Board members and representatives from pharmacy trade associations, home health agencies, and a school of pharmacy. The subcommittee will study the expanding role of the pharmacist and recommend regulatory and/or legislative changes to the Board.

At its March meeting, the Board discussed unofficial reports of a shortage of pharmacists in retail chain store pharmacies. Board members commented that the exact scope and nature of the shortage is unknown but there are currently licensed pharmacists who choose not to work in certain settings because of inadequate salary and working conditions. The Board suggested that the proposed pharmacy technician regulation may help ease the shortage by freeing pharmacists from non-professional tasks. The Board also supported recruitment of out-of-state pharmacists but strongly opposed decreasing qualifications or test scores for California licensure.

## FUTURE MEETINGS:

To be announced.

## POLYGRAPH EXAMINERS BOARD

*Executive Officer: Dia Goode (916) 739-3855*

The Polygraph Examiners Board operates within the Department of Consumer Affairs. The Board has authority to issue new licenses and to regulate the activities of an estimated 655 examiners currently licensed in California under Business and Professions Code section 9300 *et seq.* The Board has no jurisdic-

tion over federally-employed polygraph examiners.

The Polygraph Examiners Board consists of two industry representatives and three public members, all appointed to four-year terms. The Board has a sunset date of January 1, 1990.

## MAJOR PROJECTS:

*Regulatory Package Rejected in Part.* Following its review of the Board's adoption of regulatory changes after a public hearing on October 28, 1988, the Office of Administrative Law (OAL) approved new sections 3436 and 3484, and amendments to existing sections 3434, 3470, 3474, and 3480, Chapter 34, Title 16 of the California Code of Regulations (CCR). (See CRLR Vol. 9, No. 1 (Winter 1989) p. 61 for detailed background information on these changes.) However, OAL rejected proposed new sections 3486 and 3488, on grounds they fail to comply with the clarity and necessity standards in Government Code section 11349.1.

New section 3486 would have set forth procedures for the issuance of citations and fines pursuant to section 125.9 of the Business and Professions Code. The OAL determined that this section lacks clarity, as it fails to specify whether the Executive Officer has been vested with only the ministerial duty of issuing the citation (with the Board retaining the authority to determine when and against whom a citation will issue); or whether the Executive Officer has the power to determine when and against whom a citation will be issued, in addition to the ministerial act of issuing the citation. According to OAL, the Board also left unclear when requests for an extension of time for compliance with an order of abatement must be made to the Executive Officer; when an order of abatement becomes final; the manner in which these final orders are to be served; and whether the Board is authorized to issue citations to unlicensed as well as licensed persons and, if so, the procedures for the issuance of such citations.

Section 3488 would establish an informal conference procedure if requested by the licensee within ten days of service of the citation. OAL found that the method of calculating the ten-day period is unclear; and that the regulation fails to specify the time frame in which the Executive Officer is to notify the licensee of the decision made at the informal conference or how this decision is to be served. This time frame is important because the licensee must have a reasonable amount of time to review the de-