



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-



REGULATORY AGENCY ACTION

cision and determine whether to proceed to a formal hearing. Finally, the section fails to explain the consequences of a dismissal of the citation, even though it sets out the consequences which follow the affirmation or modification of a citation.

OAL found that both sections fail the necessity requirement because the rulemaking file did not explain the reasons for the addition of criteria not included in the Business and Professions Code. The Code states that in assessing a fine, the Board shall give due consideration to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the licensee, and the history of previous violations. Section 3488 expands this list of factors to eight, one of which calls for the assessment of a fine when justice would so require. OAL found that the discretionary nature of this factor so expands the application of the regulation that a showing of necessity for the expansion of the statutory criteria is essential before it may be enforced.

LEGISLATION:

SB 1494 (Dills) would dissolve the Board as a division of the Department of Consumer Affairs and would recreate it as a program within the Department of Justice. Existing Business and Professions Code provisions providing for the licensing and regulation of polygraph examiners would be recast and revised in the Penal Code, and the name of the board would become the Polygraph Examiners Commission.

The bill is in response to both the Board's scheduled sunset date of January 1, 1990, and recent federal legislation which eliminates a majority of non-criminal polygraph examinations. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 61 for background information.) This move is expected to be more cost-efficient because fewer staff members are required to operate a commission than are required to operate a board. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

The Board's meeting scheduled for February 10 in Newport Beach was cancelled.

FUTURE MEETINGS:

To be announced.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

*Executive Officer: Darlene Stroup
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The Board of Registration for Professional Engineers and Land Surveyors regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act and the Professional Land Surveyors' Act.

The basic functions of the Board are to conduct examinations, issue certificates and/or licenses and appropriately channel complaints against its licensees. The Board is additionally empowered to suspend or revoke certificates or licenses. On a routine basis, the Board considers the proposed decisions of administrative law judges who hear appeals of applicants who are denied registration and licensees who have had their licenses 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 seven standing committees dealing with land surveying and the various branches of engineering. These committees, each composed of three Board members, approve or deny applications for examinations and register applicants who pass the examinations. Their actions must have the approval of the entire Board, which is routinely forthcoming.

Professional engineers are now licensed through the three Practice Act categories of civil, electrical and mechanical engineering under section 6730 of the Business and Professions Code, and the Title Act categories of agricultural, chemical, control system, corrosion, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, and traffic engineering.

Structural engineering and soil engineering are linked to the civil Practice Act and require an additional examination after qualification as a Practice Act engineer.

MAJOR PROJECTS:

Exam Revision. At its January 27 meeting, the Board considered a proposal to change its test procedures to

improve exam administration and possibly eliminate the two-hour Special Civil Examination recently added by state law.

In 1985, the Governor signed SB 128 (Montoya), which requires engineering applicants to pass a two-hour Special Civil Examination on seismic principles and engineering surveying, in addition to the eight-hour National Council of Engineering Examiners (NCEE) exam. In addition, the applicant is required to pass a take-home test concerning knowledge of state law and Board regulations. Since the passage of that bill, the Board has delayed compliance and struggled with its implementation. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 66 for background information.)

The two-hour Special Civil Examination was finally administered for the first time in April 1988. The addition of this California-required portion increased the time required for administration of the exam from one day to two. Of the 995 candidates who passed the NCEE portion, only 131 passed the California addition.

The Board had the exam rewritten and the format changed before its second administration in October 1988. In the April exam, the questions were all subjective or "design type". The October exam consisted of both subjective and objective, multiple-choice questions. Results of the October examination are not yet available.

Since the last administration of the exam, the Board has considered a consolidation of the NCEE exam and the California addition to reduce the total test time to eight hours and the administration time from two days to one. Board staff members have indicated that this alternative would save administrative costs due to reduced proctor and site fees. Disadvantages of this plan, according to Board staff, include the added difficulty in the tracking of exam questions and the limitation of being able to offer the test only twice each year.

At its January 27 meeting, the Board rejected a proposal to consolidate the two exams, and instead decided to continue to administer the test as a two-day process. The Board will issue a request for proposals for a test validation study and for a contractor to assist in formatting and publishing the exam. The staff has also written a revised study guide to be distributed to all test candidates.

The Department of Finance approved a deficiency request by the Board to fund the administration of the two-hour Special Civil Exam during fiscal year