



REGULATORY AGENCY ACTION

second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

MAJOR PROJECTS:

Implementation of AB 1834. In compliance with AB 1834 (Connelly), BENHA recently released its report to the legislature, which outlines the policies and procedures for implementation of its disciplinary process. BENHA had previously reviewed, revised, and formally adopted these policies and procedures at its June 1988 meeting. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 67 for detailed background information.) The report also states that BENHA entered into an agreement with the State Department of Health Services (DHS), under which DHS provides BENHA with copies of enforcement actions initiated against facilities including facility license revocation actions, final involuntary decertifications from the Medicare/Medi-Cal programs, and all class "AA" and "A" citations issued after July 1, 1988. In return, BENHA provides DHS with a monthly list of all changes of facility administrators reported to the Board, as well as a list of all nursing home administrators who have had their licenses revoked, suspended, or have been placed on probation during the last three years.

The report further states that BENHA has instituted procedures to set up internal files to track each administrator receiving citations. Based upon review of these files, administrators with a pattern of poor performance will be the subject of remedial and/or formal disciplinary action.

The report states that if implementation of AB 1834 is to continue, BENHA will need to increase its fees by July 1, 1992. The report estimates that fees would need to be raised to approximately \$225 from the current \$190. This change would constitute a 13% increase and would carry BENHA through to the 1996-97 fiscal year.

LEGISLATION:

AB 2323 (Hannigan). Under existing law, administrators of residential care facilities for the elderly (RCFE) are not required to be certified or have any specific educational or training experience. This bill would require the Department of Social Services (DSS) to conduct a study to determine the appropriate

state administrative structure to certify RCFE administrators and to establish a minimum standard of education and training requirements for RCFE personnel. This bill would require DSS to create an advisory committee for the purposes of this study, including representatives from BENHA, various public agencies, consumer groups, and RCFEs. This bill passed the Assembly on June 27 and is pending in the Senate Committee on Health and Human Services at this writing.

SB 1166 (Mello) is a companion bill to AB 2323. This bill would enact the Residential Care Facilities for the Elderly Reform Act of 1989. Existing law requires RCFE administrators to attend a one-day orientation given by DSS. This bill would, commencing January 1, 1991, instead require that the applicant demonstrate that he/she has successfully completed an approved certification program involving a minimum of forty hours of class instruction, among other things. This bill passed the Senate on June 23 and is pending in the Assembly Committee on Aging and Long-Term Care at this writing.

Following is a status update on legislation reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 67:

AB 1886 (Quackenbush), as amended May 16, would provide that until January 1, 1991, any person who has been directly responsible for planning, coordinating, directing, and implementing the patient care, physical plant, and fiscal administration of a distinct part skilled nursing facility of an acute care hospital in California for one year immediately preceding his/her application for a nursing home administrator's license and who applies on or before July 1, 1990, shall be required to take the next scheduled nursing home administrator examination as a condition of licensure. This bill passed the Assembly on June 16 and is pending in the Senate Committee on Health and Human Services at this writing.

RECENT MEETINGS:

At its March 30 meeting in Sacramento, BENHA's Education Committee heard comments from representatives of the California Association of Hospitals and Health Systems (CAHHS). CAHHS anticipates that due to new federal requirements, hospital-based distinct part skilled nursing facilities (DP/SNFs) will be required to have on staff an administrator licensed by the state. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 69 for background information.) In order for

present DP/SNF administrators to avoid completing BENHA's administrator-in-training (AIT) program required of all applicants, CAHHS has proposed alternative statutory language in the form of AB 1886 (Quackenbush) (see *supra* LEGISLATION), as well as proposed amendments to BENHA's regulations. CAHHS representatives stated that the proposed language requires specified work experience in a DP/SNF of a California acute care hospital, which sufficiently qualifies a person to sit for BENHA's examination. A CAHHS representative has stated that to require DP/SNF administrators to complete the AIT program would be impractical for hospitals, and unnecessary to assure that hospitals continue to provide a high standard of care to skilled nursing facilities. After hearing the comments, the Education Committee stated that it would present the material to the full Board at its April 18 meeting.

At its April 18 meeting, BENHA addressed CAHHS' proposals. After considerable discussion, the Board agreed to support the adoption of the proposed amendment by way of legislation rather than via regulation change.

The results of the March 15 exam disclosed passage rates of 41% on the state exam, and 49% on the national exam.

FUTURE MEETINGS:

To be announced.

BOARD OF OPTOMETRY

*Executive Officer: Karen Ollinger
(916) 739-4131*

The Board of Optometry establishes and enforces regulations pertaining to the practice of optometry. The Board is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board's goal is to protect the consumer patient who might be subjected to injury resulting from unsatisfactory 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. For the past several months, the Board has been grappling with the issue of determining the eligibility of graduates of foreign optometry schools to take the state licensing examination. Section 3057.5 of the Business and Professions Code provides that



a graduate of a foreign optometry school who meets specified requirements will be admitted to take the Board's examination. The Board may refuse to admit those persons who received their degree after January 1980 if, in the opinion of the Board, the curriculum of the institution granting the degree was not "reasonably equivalent" to that of an accredited institution within the United States. Pre-1980 graduates—many of whom immigrated to the United States during the Vietnam War under a special program for Filipinos in specified professions—are not subject to equivalency standards. SB 1347 (Roberti) (Chapter 1473, Statutes of 1987) amended section 3057.5 to eliminate the Board's authority to require "reasonably equivalent" curricula for post-1980 graduates on January 1, 1991. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 62 for background information.) SB 1104 (Roberti), now pending in the legislature, would extend the Board's authority to require "reasonable equivalency" until January 1, 1992. (See *infra* LEGISLATION.)

Prior to the passage of SB 1347, the eligibility of foreign graduates was governed by section 1530.1, Title 16, California Code of Regulations (CCR). This section provides that all graduates of foreign optometry schools must furnish satisfactory evidence of a "reasonably equivalent" curriculum to the Board. If the foreign curriculum is deficient, the applicant is permitted to remedy deficiencies and qualify for admission to the examination upon furnishing satisfactory evidence of adequate remedial education. While this section—which was in effect in 1986—establishes the possibility of a remedial education, no such remedial educational program has ever been available to foreign graduates, such that their only recourse is to retake and complete an entire course of study at a Board-approved optometry school. According to a March 1989 memorandum from Department of Consumer Affairs legal counsel, SB 1347 was introduced by Senator Roberti in 1986 when it became apparent that the Board of Optometry had failed to prescribe or accept any remedial training which would qualify foreign graduates for the examination.

In November 1988, the Board's Credentials Committee met to discuss this issue. Board member Larry Thal explained that the 1987 Roberti legislation mistakenly eliminates Board control over educational requirements for a group of applicants "known to be deficient by transcript evaluation...and by demonstrated poor performance on the National

Board of Examiners in Optometry (NBE) examination." The Credentials Committee suggested that the Board must decide how foreign graduates will receive remedial training, whose responsibility it is to provide it, and what legislative steps the Board should take.

Committee Chair Pamela Miller suggested that the Board seek legislation to restore section 1530.1 to full effect. Other options recommended by the Credentials Committee focused on seeking Senator Roberti's support for the development of a remedial training program in the Los Angeles area. At its March 31 meeting, the Board voted to seek legislation to restore section 1530.1.

Regulatory Action. On May 8, the Office of Administrative Law (OAL) disapproved the Board's proposed adoption of section 1533.1, Title 16 of the CCR, which sets forth an appeals procedure for unsuccessful candidates to the Board's licensing examination. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 69 and Vol. 8, No. 4 (Fall 1988) p. 68 for background information.) The Board's amendment of section 1561, regarding topical pharmaceutical agents usage, was approved by OAL.

LEGISLATION:

SB 1104 (Roberti) would extend until January 1, 1992, the Board's authority to refuse to honor an optometry degree awarded by a foreign university if the Board finds the curriculum to be less than that required in the United States. (See *supra* MAJOR PROJECTS.) This bill is pending in the Assembly Health Committee.

AB 881 (Hughes) would authorize the Board to require that proof of completion of continuing education courses, as a condition of the renewal of a license, be submitted on an annual or biannual basis as determined by the Board. This bill, which was sponsored by the California Optometric Association, is pending in the Senate Business and Professions Committee.

AB 1807 (Statham) would authorize optometrists having experience equivalent to specified educational and examination requirements deemed sufficient by current law, as determined by the Board, to be permitted the use of pharmaceutical agents. This bill is pending in the Assembly Health Committee.

AB 2198 (Klehs) would require the Board to hold the examination for licensure at least twice per year. This bill would also increase the maximum amount for the application fee from \$75 to \$195 and would increase the maximum refund

for those applicants deemed ineligible to take the examination from \$50 to \$150. AB 2198 is pending in the Assembly Ways and Means Committee.

SB 929 (Seymour), as amended May 17, would provide that no licensed physician, optometrist, or dispensing optician shall dispense, sell, or furnish contact lenses (including plano contact lenses) at retail unless the licensee, the licensee's technician, or the registrant's registered contact lens dispenser or trainee has first determined the proper fit of the lenses by fitting the generic type of lenses to the person named in the prescription. SB 929 would also provide that a licensed physician, optometrist, or registered dispensing optician may dispense, sell, or furnish a contact lens through the mail or other delivery service only if the licensee or his/her technician or a registrant's dispenser or trainee has fit that generic type of lens to the person named in the prescription. This bill is pending in the Assembly Health Committee.

RECENT MEETINGS:

At its March 31 meeting, the Board spent considerable time discussing the fact that license certificates issued in 1987 did not accurately reflect the titles of the Board members who were in office on the date of the certification. While the situation has no effect whatsoever on the licensees' status, the Board is considering the reissue of replacement certificates indicating the correct titles of the officers who were serving when the original certificates were signed. After a lengthy debate, the Board's legal counsel suggested that this issue must be noticed as an agenda item for the next meeting before the Board may act.

Another hotly debated issue was the reimbursement for Board member Kunkel's expenses incurred when he attended a special orientation meeting for new members. Dr. Kunkel had already attended four such meetings. Because the Board had previously instituted a policy to cut down on expenses, Executive Officer Karen Ollinger refused to approve the travel claim. This issue was tabled as time was running short.

FUTURE MEETINGS:

To be announced.