



REGULATORY AGENCY ACTION

BUREAU OF PERSONNEL SERVICES

Chief: Jean Orr
(916) 920-6311

The Bureau of Personnel Services was established within the Department of Consumer Affairs (DCA) to regulate those businesses which secure employment or engagements for others for a fee. The Bureau regulates both employment agencies and nurses' registries. Businesses which place applicants in temporary positions or positions which command annual gross salaries in excess of \$25,000 are exempt from Bureau regulation; similarly, employer-retained agencies are also exempt from Bureau oversight.

The Bureau's primary objective is to 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.

MAJOR PROJECTS:

Chief Orr Announces Retirement. Bureau Chief Jean Orr has announced her retirement effective June 30, 1989. In addition to being the only Bureau Chief to come from within the personnel services industry, Chief Orr's service since her appointment six years ago makes her the longest-serving Chief the Bureau has had. Chief Orr began her tenure with the Bureau in July 1983 as an appointee of Governor Deukmejian. She continues to voice her opposition to the ongoing dismantling of the Bureau, and states that she is proud of her staff's accomplishments. Specifically, she believes the Bureau's efforts in securing the closure of several large illegitimate employment agencies has protected many California consumers.

LEGISLATION:

The following is a status update on bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 70:

AB 2113 (Johnson), as amended May 17, is entitled the "Personnel and Employment Agency Services Act." It would

repeal the entire Employment Agency Act of the Business and Professions Code, including all provisions which provide for the Bureau's funding, examining, licensing, and regulatory functions. The bill would also reenact certain provisions of the Act as part of the Civil Code so that the contents of employment agency contracts, advertising, and fees of such agencies would be regulated by statute, not by the Bureau.

Specifically, AB 2113 proposes to: (1) delete licensing and regulation by the Bureau; (2) provide for a three-day cancellation period during which a job seeker may cancel a contract with an employment agency; (3) eliminate the bond requirement for certain employment agencies; (4) require the filing of the bond with the Secretary of State rather than with the Bureau; (5) revise standards of conduct for employment agencies; (6) make specified violations of those provisions also a violation of unfair trade practices law, as specified; (7) make certain contracts entered into by reason of fraud or misrepresentation void and unenforceable; and (8) provide for a civil penalty and a cause of action for damages by any person injured by reason of a violation of those provisions. Additionally, the DCA must submit to the legislature a preliminary report regarding the implementation of this bill by March 31, 1990; and a final report by June 30, 1991.

According to DCA staff counsel Jay DeFuria, the Bureau's licensure requirement helps promote competence, but most problems in the personnel services industry relate to fraud, not incompetence. He states that the Bureau, with its revenue base limited by the partial industry deregulation under AB 2929, cannot effectively protect consumers from fraud. AB 2929 (Chapter 912, Statutes of 1986) removed employer-retained agencies from the Bureau's oversight as of July 1, 1987. The Bureau suffered a 60% decline in its funding as a result of this decrease in the number of its licensees. (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.)

According to DeFuria, AB 2113 would provide enforcement remedies which will protect consumers from fraud, and may be further amended to include enhanced recovery of costs for the Attorney General and for local district attorneys who bring actions against employment agencies under the new Act. He says the substantive law requirements for employment agencies will remain

mostly unchanged.

AB 2113 has survived a policy analysis by the Assembly Governmental Efficiency and Consumer Protection Committee and is pending in the Assembly Ways and Means Committee at this writing. Bureau Chief Orr is dissatisfied with AB 2113, as amended. She believes the Attorney General and local district attorneys do not want the added workload of conducting initial investigations of consumer fraud complaints. She believes many consumers, particularly minorities, will be victims of defrauding specialists, and will have no realistic means of redress.

AB 2469 (Johnston) would continue the present deregulation of employer-paid agencies which occurred under AB 2929 beyond the January 1, 1991 sunset date. This bill passed the Assembly on June 7 and is awaiting committee assignment in the Senate at this writing.

SB 1673 (Montoya), which would add an applicant's complaint history to the Bureau's criteria for evaluating possible restrictions on an applicant's license, is a two-year bill pending in the Senate Business and Professions Committee.

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. On April 10,



the Office of Administrative Law (OAL) disapproved the Board's proposed amendments to section 1724, Chapter 17, Title 16 of the California Code of Regulations (CCR), which would have revised the pharmacists' examination format. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 70 and Vol. 9, No. 1 (Winter 1989) p. 66 for background information.) OAL's decision to disapprove the proposed regulation cited problems in the areas of necessity and clarity. The proposed amendments, with supporting changes in the rulemaking file, were resubmitted to OAL and approved on May 18.

Regulatory Hearings Held. The Board conducted hearings in May to receive comment on three proposed regulatory changes. The first proposal would amend section 1707.1, Chapter 17, Title 16 of the CCR. The amended regulation would require pharmacists to orally consult with the patient whenever a prescription drug is dispensed for the first time. The amendment would also require that the consultation include at least directions for use, precautions, and relevant warnings. After the hearing, the Board slightly modified the language of the proposed amendment, and approved the change subject to another comment period which ended on July 17.

The second proposal would amend section 1717(c), Chapter 17, Title 16 of the CCR. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 70-71 for background information.) The proposed regulation would authorize an unlicensed person, under the supervision of the pharmacist, to perform any task *except* the following: receiving new verbal prescription orders; consulting with a patient, prescriber, or other health professional regarding a prescription or medical information; evaluating prescriptions; interpreting patient records; and verifying prescriptions before dispensing. By identifying the functions that only the licensed pharmacist may perform, the regulation would permit the increased use of non-licensed personnel for more routine tasks within pharmacies. The Board also approved of these changes subject to minor modifications, which were released for another public comment period ending July 17.

The third regulatory proposal adopted at the May meeting would add section 1710 to Chapter 17, Title 16 of the CCR. This section would define an inpatient hospital pharmacy as a hospital pharmacy predominantly furnishing drugs to outpatients, employees, and walk-in customers, provided that the walk-in customers are less than 1% of the pharmacy's sales of drugs. A definition of

this term is required by the language of section 4080.5 of the Business and Professions Code, which significantly restricts prescriber ownership of pharmacies, except for hospital pharmacies.

English Proficiency Examination. The Board was scheduled to hold a July 25 hearing in Sacramento to receive comments on a proposed amendment to section 1719, Chapter 17, Title 16 of the CCR. The existing regulation requires an examination candidate to have graduated from an accredited school of pharmacy and to have gained a minimum of 1,000 hours of intern experience prior to applying for the examination. The proposed amendment would additionally require all candidates to take and pass, prior to applying for the examination, the Test of Spoken English administered by the Educational Testing Service.

Corresponding Responsibility. At its March meeting, the Board approved guidelines from the Committee on Corresponding Liability, which studied implementation of section 1761, Chapter 17, Title 16 of the CCR. Section 1761 imposes disciplinary liability on a pharmacist who dispenses a controlled substance if the pharmacist knows or has reason to know that the prescription was not issued for a legitimate medical purpose. This corresponding liability provision resulted in questions from pharmacists about how to evaluate suspicious prescriptions for controlled substances.

The guidelines offer a list of factors relating to the patient, prescriber, and the therapeutic appropriateness of the prescription to be considered in determining whether a controlled substance prescription is questionable.

Scope of Practice. The Ad Hoc Committee on Scope of Practice was scheduled to meet on July 12 in Sacramento. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 71 and Vol. 9, No. 1 (Winter 1989) p. 61 for background information.) Items scheduled for discussion included regulatory action pertaining to Schedule II prescriptions and pain management, furnishing medication and supplies to pariental patients, and approval of consultation areas in pharmacies.

LEGISLATION:

AB 1177 (Kelley) would make technical changes in section 4008 of the Business and Professions Code relating to the Board of Pharmacy. This is now a two-year bill.

The following is a status update on bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 71:

AB 102 (Filante), which would amend

the existing law which created a Legislative Task Force on Medication Misuse to design a model medication program and a brochure, is pending in the Senate Health and Human Services Committee.

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

AB 1006 (Isenberg), which would require health maintenance organizations to allow non-contracting pharmacies to provide services to beneficiaries and to be paid an amount equal to the contract payment, is pending in the Assembly Finance and Insurance Committee.

AB 1397 (Filante), which would require pharmacist consultation when an initial prescription is filled or when a pharmacist deems that a consultation is warranted, is pending in the Assembly Health Committee.

AB 1591 (Condit), which would amend section 1056 of the Health and Safety Code to include anabolic steroids on the list of controlled prescription substances, is pending in the Senate Judiciary Committee.

AB 1729 (Chandler), which would increase the penalties for subversion of a licensing examination, is pending in the Assembly Ways and Means Committee.

AB 1986 (Ferguson), which would create felony criminal and civil penalties for prescribing controlled substances to minors without the written consent of parents or guardians, is currently pending in the Assembly Judiciary Committee.

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 jurisdiction over federally-employed polygraph examiners and very limited jurisdiction in the non-criminal arena.

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