



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



REGULATORY AGENCY ACTION

date of January 1, 1990.

MAJOR PROJECTS:

Board Rulemaking. In June, the Board resubmitted modified versions of new regulatory sections 3486 and 3488, Chapter 34, Title 16 of the California Code of Regulations. The Office of Administrative Law had previously rejected these new provisions, which would set forth procedures for the issuance of citations and fines by the Board, and establish an informal conference procedure for resolving citations. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 71-72 for background information.)

LEGISLATION:

SB 1494 (Dills), which would recast and revise the statutes providing for the licensing and regulation of polygraph examiners under the Penal Code and transfer the power and duties of the Board to the Department of Justice, is pending in the Senate Appropriations Committee at this writing. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 72 for detailed background information on the ramifications of this bill.)

RECENT MEETINGS:

The Board has not met since October 28, 1988.

FUTURE MEETINGS:

To be announced.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Executive Officer: Darlene Stroup (916) 920-7466

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 mem-

bers: 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:

Emergency Board Meeting. Responding to what it called a "breach in examination security," the Board determined that it was necessary to hold an emergency meeting under the provisions of Government Code section 11125.5(c). The meeting took place on April 1 in San Diego, and the Board voted to delay the scheduled April 15 administration of the professional land surveyor exam to August 12, coinciding with the structural engineer exam.

OAL Rejects Proposed Rules. On March 6, the Office of Administrative Law (OAL) rejected the Board's proposed amendments to sections 400, 403, 408, 410, 411, and 441, and the repeal of sections 413 and 414, Chapter 5, Title 16 of the California Code of Regulations (CCR). These changes were meant to be "clean-up" amendments to the Board's regulations (see CRLR Vol. 9, No. 1 (Winter 1989) p. 62 and Vol. 8, No. 4 (Fall 1988) pp. 71-72 for background information), but were rejected because they did not comply with the clarity standard, since OAL found they could not be easily understood by persons directly affected by them. OAL called

portions of the language undefined, vague, and ambiguous. OAL further said that the authority requirement was not satisfied because the Board cited to sections 6710, 8706, and 6785 of the Business and Professions Code, sections which do not grant the Board rulemaking authority. Finally, OAL based its rejection on what it called an incomplete record of the rulemaking hearing.

On April 6, OAL rejected the Board's proposed adoption of sections 470 and 471, Chapter 5, Title 16 of the CCR. The rules would have set forth time periods within which the Board must inform applicants for licenses that their applications are complete and accepted for filing or that the application is deficient and the specific information which is required; and a time period in which the Board must reach a decision on the application. The rules were meant to bring the Board into compliance with the Permit Reform Act of 1981 (Government Code sections 15374-15378). OAL based its rejection on what it viewed as noncompliance with the necessity and consistency standards of Government Code section 11349.1, saying that the rulemaking file did not contain "substantial evidence demonstrating the need for the particular time periods selected under the Permit Reform Act of 1981," and that the language the Board used to set forth the time in which it must reach a decision on an application was not consistent with what the statute requires.

Structural Engineer Rulemaking Delayed Again. At its March 10 meeting, the Board voted to renounce the language of proposed regulatory sections 426.12 and 427.30. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 62 and Vol. 8, No. 4 (Fall 1988) pp. 71-72 for detailed background information.) Section 426.12 would define the experience which shall be considered as "qualifying" toward the requirements necessary to use the title "structural engineer"; and section 427.30 would describe the types of professional references which applicants for the authority to use the title "structural engineer" must produce. The Board has decided to renounce the language of these sections as it was originally noticed for hearing in November 1988. The Board also plans to make grammatical changes to Section 426.10, and will renounce those changes as well.

LEGISLATION:

AB 439 (Lewis). Existing law requires that lot line adjustments between adjacent parcels be reflected in a deed or record of survey and be recorded. As