



cians, surgeons, nurses, ambulances, medicines, and other medical supplies; she seeks reimbursement for these costs. Finally, Dr. Hall seeks punitive damages.

The Board contends that federal law does not impose a duty to undertake affirmative efforts to overcome Dr. Hall's condition; rather, it requires evenhanded treatment. In other words, the law prohibits an agency from basing a denial of an opportunity to participate in an exam situation on a handicap. Further, the Board claims that, as a matter of policy, the federal statute to which Dr. Hall refers is unsuited to an occupational licensing application. Whether a person should be required to read under time pressure in order to be licensed as a veterinarian is best determined by those who have expertise in the knowledge and qualities required to be an effective veterinarian. The Board claims it is recognized by California law as having that expertise.

Regarding the due process claim, the Board argues that Hall did not have a vested property right, as the matter in dispute took place before Dr. Hall had a California license. Finally, BEVM claims that Dr. Hall's allegation of an equal protection violation is unfounded. The Board argues that Dr. Hall has failed to allege that the Board's conduct created or affected any suspect classification; that any such classification interfered with fundamental rights; or that any classification was made at all.

Hall v. Kelley was filed in Orange County Superior Court in 1988. (See CRLR Vol. 8, No. 4 (Fall 1989) p. 76 for background information.) Because of the presence of federal claims, the Board recently petitioned to have the action removed to federal court. At the same time, the Board moved for dismissal based on failure to state a claim upon which relief may be granted.

RECENT MEETINGS:

During the summer, BEVM awarded inspection contracts to five veterinarians. The contracts are for one year (July 1, 1989-June 30, 1990). Three of the inspectors have previously served in this capacity; the other two inspectors have completed training. The state of California consists of thirteen inspection districts; the inspectors bid on each district. The Board assigned districts based on the bidding, and the inspectors have begun making inspections in their districts.

The Board views the inspection program as an educational rather than punitive program. According to the Board,

the program has been enthusiastically received by veterinarian hospitals. Veterinarians are eager to know whether their hospitals meet standards, and if not, how the hospitals can be improved to meet standards. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 82-83 for background information.)

FUTURE MEETINGS:

January 11-12 in San Francisco.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Officer: Billie Haynes (916) 445-0793

This agency regulates two professions: vocational nurses and psychiatric technicians. Its general purpose is to administer and enforce the provisions of Chapters 6.5 and 10, Division 2, of the Business and Professions Code. A licensed practitioner is referred to as either an "LVN" or a "psych tech."

The Board consists of five public members, three LVNs, two psych techs, and one LVN with an administrative or teaching background. At least one of the Board's LVNs must have had at least three years' experience working in skilled nursing facilities.

The Board's authority vests under the Department of Consumer Affairs as an arm of the executive branch. It licenses prospective practitioners, conducts and sets standards for licensing examinations, and has the authority to grant adjudicatory hearings. Certain provisions allow the Board to revoke or reinstate licenses. The Board currently licenses approximately 68,000 LVNs and 14,000 psychiatric technicians.

Current Board members include Kathleen Fazzini Barr, LVN (President), Deloyce Arrington, LVN (Vice-President), Frances Junilla, LVN, Gwendolyn Hinchey, RN, Bruce Hines, PT, Kenneth G. Audibert, PT, and public members E. Charles Connor, Betty Fenton, Patricia A. Lang, Helen Lee, and Manuel Val. Frances Junilla, the Board's newest appointee, was sworn in during the Board's September 22 meeting. Her term will expire on June 1, 1992.

Effective June 20, the Board moved to new offices located at 1414 K Street, Suite 101 (Administrative Office), Suite 102 (PT Unit), Suite 103 (LVN Unit), Sacramento, CA 95814. The telephone number is unchanged.

MAJOR PROJECTS:

Fee Increase Regulation. On July 14, the Board held a public hearing in Monterey on its proposal to amend section 2537, Chapter 25, Title 16 of the California Code of Regulations (CCR). The amendment increases the Board's application fee, biennial renewal fee, and initial license fee to \$50. The Board approved the increase after the hearing; the Office of Administrative Law (OAL) approved the rulemaking file on September 27.

Debbie Ochoa, budget analyst for the Department of Consumer Affairs, presented alternative fee structures to the Board during its September 22 meeting. The Board prefers to retain lower fees for new graduates and increase the fees in subsequent renewal periods. At its November 17 meeting, the Board was scheduled to further discuss the fee structure, and plans to approach the legislature in January with a new proposed statutory maximum. The new fees would take effect in January 1991.

Update on Computer Aided Testing. The implementation of computer aided testing for PTs is proceeding. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 68 and Vol. 8, No. 4 (Fall 1988) p. 77 for background information.) Dr. Robert Sikes, Technical Coordinator of CTB McGraw Hill, has determined that proper validation of the proposed computerized PT testing will require 400 PT candidate participants in each validation testing session. Two hundred students should take the exam via the pen and pencil method, and the other 200 should take a computerized test. At the last testing session, only 368 candidates showed, which would skew the desired results. The Board will therefore administer a fifth validation study at a cost of \$5,000 in December 1989. This will postpone 1990 testing dates by one month. The regularly scheduled March exam will be in April 1990, which is the projected implementation date for PT computerized testing. Testing centers will be located in Sacramento and Los Angeles, and will enable the Board to provide year-round testing of PT candidates. PT schools will be notified of the new scheduling procedures.

Registered Care Technologist Proposal. The Board recently reiterated its official position of opposition to the American Medical Association's (AMA) proposal to create a Registered Care Technologist (RCT) position. The AMA states that this proposal will increase the availability of health care personnel in the face of the current and long-term



REGULATORY AGENCY ACTION

nursing shortage; however, the Board believes that the proposal would significantly lower the quality of patient care as well as endanger the health, safety, and welfare of consumers in California. One of the Board's primary concerns is that most of the functions identified for the RCT position are within the scope of LVN practice in California.

Implementation of Automated Cashiering System. The central cashiering unit of the Department of Consumer Affairs (DCA) has implemented an automated license renewal process which was intended to decrease personnel needs in that area. However, many of the Board's licensees' checks and money orders for renewal of their licenses have been lost; as a result, 5,000 nurses have been laid off pending receipt of notification of status by their employers. Billie Haynes will be meeting with DCA Director Michael Kelley to resolve this serious nursing problem.

LEGISLATION:

The following is a status update on bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 75:

SB 325 (Greene, B.), as amended July 10, authorizes the Board to suspend or revoke the license of an LVN who uses excessive force upon or mistreats any patient. This bill was signed by the Governor on September 22 (Chapter 685, Statutes of 1989).

SB 576 (Maddy), which states that persons who agree in writing prior to graduation to serve in an eligible county health facility are eligible to participate in the Registered Nurse Education Program, was signed by the Governor on September 8 (Chapter 326, Statutes of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: **SB 368 (Torres),** which would define "nursing hours" as the number of hours of work performed per patient day by aides, nursing assistants, orderlies, RNs, or LVNs; and **AB 395 (Felando),** which would require all hemodialysis technicians, LVNs, and RNs who provide services to dialysis patients in a patient's home to be held to the same requirements as when they provide health care services to dialysis patients in a dialysis clinic.

RECENT MEETINGS:

At its September 22 meeting, the Board discussed a recent management study of its PT and LVN organizational structure performed by an outside consulting group. The PT and LVN units are essentially two separate boards supported

by a single support staff group. The consultants recommended that the Board hire a full-time program manager to oversee the PT program and supervise budget and licensure responsibilities. This individual would report to the Board Executive Officer Billie Haynes.

The Board agreed with the recommendation at the September meeting, but does not currently have the funds to hire the manager.

FUTURE MEETINGS:

May 10-11 in Sacramento.



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh
(916) 445-6811

The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department. The Alcoholic Beverage Control Act vests the Department with the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the state. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC issues liquor licenses and investigates violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in the liquor industry trade publications *Beverage Bulletin* and *Beverage Industry News*.

ABC divides the state into two divisions with assistant directors in charge of each division. The state is further subdivided into 21 districts, with two districts maintaining branch offices.

ABC dispenses various types of licenses. "On-sale" refers to a license to sell alcoholic beverages which will be bought and consumed on the same premises. "Off-sale" means that the licensee sells alcoholic beverages which will not be consumed on the premises.

MAJOR PROJECTS:

Proposition 65 Rulemaking. Following a July 25 public hearing, the Health and Welfare Agency (HWA) adopted an amendment to section 12601, Title 22 of the California Code of Regulations (CCR), to set forth a warning message

which must be posted by businesses involved with alcoholic beverages on and after July 1, 1989. HWA has previously approved the change on an emergency basis; the July 25 hearing was conducted for purposes of permanently adopting the regulatory change. The warning must be posted pursuant to Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986. As amended, section 12601 sets forth the following warning message: "WARNING: Drinking Distilled Spirits, Beer, Coolers, Wine and Other Alcoholic Beverages May Increase Cancer Risk, and, During Pregnancy, Can Cause Birth Defects." The warning must be posted at point of sale.

Federal Labeling Requirements Now Effective. Congress passed the Alcoholic Beverage Labeling Act of 1988, 27 U.S.C. section 213, to require uniform warnings informing the American public of the health hazards which may result from alcohol consumption or abuse. The Act requires health warning labels to appear on all alcoholic beverages sold or distributed in the United States beginning with beverages bottled as of November 18, 1989. Although the Act directly affects the California liquor industry, investigations of violations will not be conducted by ABC but rather by the U.S. Bureau of Alcohol, Tobacco and Firearms.

LEGISLATION:

AB 165 (Floyd) specifies that a person under the age of 21 who produces, uses, or possesses false or fraudulent evidence of age and identity for the purpose of obtaining alcoholic beverages is guilty of a misdemeanor and subject to a minimum fine of \$250. This bill was signed by the Governor on July 10 (Chapter 110, Statutes of 1989).

AB 594 (Hill), as amended August 22, authorizes ABC to impose reasonable conditions as any alcoholic beverage li-