



to discontinue oral exams; however, section 5651 of the Business and Professions Code must be amended to delete the oral exam requirement.

Irrigation Consultants Licensure. The Board continues to discuss the possibility of creating an Irrigation Consultants Examining Committee (see CRLR Vol. 8, No. 3 (Summer 1988) pp. 61-62 for background information). At its September 16 meeting, the Board considered a lengthy draft legislative proposal prepared by Department of Consumer Affairs legal counsel Don Chang, which would authorize the establishment of a new five-member examining committee to assist the BLA in examining irrigation consultant applicants, including investigation and evaluation of applicants and recommendation to the Board concerning the final determination of licensure. The draft legislation also defines the term "irrigation consultant" and the practice of irrigation consulting; describes exemptions to the Irrigation Consultant License Law; and makes it a misdemeanor to practice irrigation consulting or to use the title without a license.

At that time, the Board voted to support the proposal in concept, but was unwilling to approve the language of the proposed legislation. The BLA was scheduled to take up the matter again at its November 17 meeting.

LEGISLATION:

SB 2810 (Marks) was signed by the Governor (Chapter 600, Statutes of 1988). This bill adds certain fee provisions affecting architects licensed by the state Board of Architectural Examiners. As it applies to landscape architects, the bill increases the fees for examinations and renewals of certificates to practice landscape architecture to an amount to be fixed by the Board, not to exceed \$325 and \$300, respectively. It also raises the delinquency fee to a maximum of \$150. Finally, SB 2810 provides that certificates to practice landscape architecture shall expire no more than 24 months after the date of issuance.

SCR 68 (Campbell) was also chaptered in August. This measure urges the Department of General Services to utilize drought-resistant plants for landscaping new state buildings. Such plants promote the interests of beauty, style, and water conservation.

RECENT MEETINGS:

At the Board's July 8 and September 16 meetings, the Enforcement Committee reported on its progress in revising

BLA's consumer guide. Although still in draft stage, the guide outlines for the consumer the requisite qualifications, skills, and educational background of BLA licensees. It describes the range of activities and types of designs performed by licensees, and includes tips on hiring a landscape architect. The guide also lists the names of the current members of the Board and provides the address and phone number where consumers may direct questions and complaints. The Board will continue to review revised versions of the consumer guide at future meetings.

FUTURE MEETINGS:

To be announced.

BOARD OF MEDICAL QUALITY ASSURANCE

*Executive Director: Ken Wagstaff
(916) 920-6393*

BMQA is an administrative agency within the state Department of Consumer Affairs. The Board, which consists of twelve physicians and seven lay persons appointed to four-year terms, is divided into three autonomous divisions: Allied Health, Licensing and Medical Quality.

The purpose of BMQA and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code sections 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues.

The functions of the individual divisions are as follows:

The Division of Allied Health Professions (DAHP) directly regulates five non-physician health occupations and oversees the activities of seven other examining committees which license non-physician certificate holders under the jurisdiction of the Board. The following allied health professionals are subject to the jurisdiction of the Division of Allied Health: acupuncturists, audiologists, drugless practitioners, hearing aid dispensers, lay midwives, medical assistants, physical therapists, physical therapist assistants, physician's assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts and speech pathologists.

The Division of Medical Quality (DMQ) reviews the quality of medical

practice carried out by physicians and surgeons. This responsibility includes enforcing the disciplinary and criminal provisions of the Medical Practice Act. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, allied health professionals and lay persons appointed to investigate matters assigned by the Division of Medical Quality, hear disciplinary charges against physicians and receive input from consumers and health care providers in the community.

Responsibilities of the Division of Licensing (DOL) include issuing licenses and certificates under the Board's jurisdiction, administering the Board's continuing medical education program, suspending, revoking or limiting licenses upon order of the Division of Medical Quality, approving undergraduate and graduate medical education programs for physicians, and developing and administering physician and surgeon examinations.

BMQA's three divisions meet together approximately four times per year, in Los Angeles, San Diego, San Francisco and Sacramento. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

MAJOR PROJECTS:

License and Renewal Fee Increases. After a September 16 public hearing, the DOL unanimously approved previously proposed amendments to sections 1351.5 and 1352 of BMQA's regulations in Title 16 of the California Code of Regulations (CCR), which will increase both the biennial renewal fee and the initial license fee to \$290. The fees were increased to maintain an adequate reserve balance in the Board's fund, as mandated by section 2435(e)(3) of the Business and Professions Code. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 62 for background information.) The amendments will now be reviewed by the Office of Administrative Law (OAL).

Proposed Regulatory Changes. Also at its September 16 meeting, the DOL held a continuation of a public hearing on two other proposed regulatory changes. Proposed amendments to sections 1321 and 1315 require that a licensee's clinical training must be completed in contiguous blocks and that the required one year of postgraduate training be a continuous year. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 62-63



for background information.) The proposed changes were approved by the Board after the September hearing and will be submitted to OAL for review.

Site Visit Report. At the September meeting, the DOL submitted a draft report of its review of foreign medical schools to the Board. The report is in response to AB 1859 (Chapter 1176, Statutes of 1985), which requires the Division to conduct site visits of medical schools and accreditation systems in three countries on three continents for the purpose of developing a program for approving foreign medical schools. BMQA members and staff evaluated medical schools in the United Kingdom, the Philippines, and Mexico. The report included the following site visit evaluations: (1) medical education in the United Kingdom, which is approved by Great Britain's General Medical Council, is equivalent to U.S. accredited schools; and (2) serious quality problems generally exist in the Philippine and Mexican medical schools visited. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 61; Vol. 8, No. 1 (Winter 1988) pp. 59-60; Vol. 6, No. 4 (Fall 1986) p. 40; and Vol. 6, No. 2 (Spring 1986) p. 46 for background information on AB 1859 and DOL's site visits.)

The draft report also included four different approaches to the problem of approving foreign medical schools. First, the state could support a federally-chartered Coordinating Council on Foreign Medical Education (CCFME). BMQA could use facts gathered by CCFME to evaluate foreign medical schools. Second, BMQA could reject any applicant's foreign training unless the particular school attended applies for and is granted approval. Such approval may be based on CCFME data or other information. Third, BMQA could approve schools which have been accredited by a foreign system certified by the Board as equivalent to U.S. standards. For example, under this approach, medical schools approved by Great Britain's General Medical Council would be acceptable to the Board. The training credentials of applicants for licensure from schools which do not operate under an accredited system would be reviewed on an individual basis. Fourth, rather than investigate and approve foreign schools, BMQA could regulate quality by focusing on postgraduate clinical training, and possibly requiring three years of acceptable residency experience for all applicants.

Nursing Home Care Quality. In response to the Little Hoover Commis-

sion's May 20 public hearings on the quality of physician services to persons in long-term care/nursing homes, BMQA proposed taking action to ensure improvement in this area. These short- and long-term suggestions include conducting and tracking peer review activities, involving increased numbers of physician's assistants in patient care, and opening patient medical records for BMQA review to determine patterns of substandard care. BMQA has offered its assistance in implementing these and other suggested actions. Action is pending final Little Hoover Commission hearings.

LEGISLATION:

The following is a status update on bills discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 63-64 and Vol. 8, No. 2 (Spring 1988) at pages 62-63:

AB 1164 (Speier) was signed by the Governor on September 20 (Chapter 997, Statutes of 1988). The bill requires the Board to report to the legislature, on or before June 30, 1988, on actions it has taken to improve the opportunity for the public to file complaints against a health provider. In addition, this bill requires BMQA to refund a full initial license fee and a full biennial renewal fee to resident physicians and surgeons who paid pursuant to the law in effect prior to January 1, 1987.

Previous versions of AB 1164 contained a requirement that BMQA establish and maintain a toll-free telephone number to receive complaints from the public concerning the quality of medical practice by BMQA licensees. A recent Assembly Office of Research report, entitled "No Such Listing: Consumer Access to the Board of Medical Quality Assurance," found that BMQA's Sacramento and regional office phone numbers are not listed in the vast majority of local telephone directories; information operators are often unable to help confused callers; and BMQA's public outreach efforts have been minimal. (For further information on the study, see *supra* agency report on ASSEMBLY OFFICE OF RESEARCH.) However, due to strong BMQA opposition (see CRLR Vol. 8, No. 3 (Summer 1988) p. 64), that language was amended out of the bill on August 8.

AB 3766 (Connelly), authorizing courts to order prescribers charged with violating specific felony controlled substance laws to surrender all triplicate prescription blanks in the practitioner's possession, was signed by the Governor

on August 27 (Chapter 639, Statutes of 1988).

AB 4018 (Filante) provides that persons in the medical corps of the armed forces providing medical services on a federal reservation but who are not licensed as physicians in California may engage in a residency or other clinical training program under specified conditions. This bill was signed by the Governor (Chapter 1182, Statutes of 1988).

SB 2491 (Montoya) clarifies the extent to which a health facility may prohibit discrimination between those holding MD or DO degrees; mandates specified procedures to ensure high professional and ethical standards among physician staff; and prohibits professional association membership as a prerequisite for staff privileges. This bill was signed by the Governor (Chapter 661, Statutes of 1988).

SB 2565 (Keene), as amended August 26, would have modified existing law which requires reporting to BMQA by hospitals and hospital medical staffs for disciplinary actions taken or restrictions imposed following peer review activities. The bill would also have provided that licensees who are the subject of a peer review proceeding are entitled to certain procedural protections and rights. At its September meeting, BMQA members voiced strong misgivings over complex procedural details which would allegedly make peer review too difficult, time-consuming, and expensive, inevitably discouraging physicians from participating. The Board changed its original support position and voted to oppose the bill. A letter stating BMQA's opposition to SB 2565 was sent to the Governor, who vetoed the bill on September 30.

AB 3034 (Roos), as amended June 28, would have directed the Division of Licensing to encourage physicians to take a course on AIDS if his/her practice may require knowledge in that area. This bill was vetoed on September 22.

AB 3473 (Filante), as amended August 26, extends "good samaritan" immunity from civil damages liability to physicians who render emergency obstetrical services. Immunity will not apply if the physician gave prior medical diagnosis or treatment of the obstetrical condition which required emergency services; had a prior contractual service obligation with the patient, other physician, or third-party payor; or reasonably expected payment for patient care emergency services. This bill was signed on September 26 (Chapter 1306, Statutes of 1988).



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SB 645 (Royce), as amended August 22, prohibits employment or use of medical assistants in general acute care hospitals. The bill also authorizes the DAHP to establish standards for technical functions to be performed by medical assistants. This bill was signed by the Governor (Chapter 666, Statutes of 1988).

SB 1552 (Kopp), as amended August 23, requires specified health care professional licensing agencies to consider including AIDS training as part of mandatory continuing education requirements; it requires certain health care facilities to consider such training in nurse assistant programs; and the Emergency Medical Services Authority must consider similar training for emergency medical technicians. This bill was signed by the Governor on September 22 (Chapter 1213, Statutes of 1988).

AB 4277 (Bronzan), regarding reporting by ambulatory surgery centers of denial, restriction or revocation of physician staff privileges, was chaptered on August 15 (Chapter 419, Statutes of 1988).

SB 2495 (Roberti) was signed by the Governor on August 26 (Chapter 596, Statutes of 1988). Before performing biopsies on breast cancer patients, physicians and surgeons must inform the patient, in writing, of alternative methods of treatment.

AB 4507 (Harvey), which would have provided that a physician may require AIDS antibody testing to be performed on individuals having non-emergency surgery; *AB 4508 (Harvey)*, which would have amended the prohibition on disclosure of AIDS test results; *AB 4682 (Isenberg)*, stating that medical doctors and chiropractors shall be accorded equal professional status; *SB 859 (Montoya)*, prohibiting hospitals from requiring foreign medical graduates to satisfy any requirements other than those required of U.S. and Canadian graduates; *AB 4387 (Bronzan)*, which would have increased possible fines against physicians guilty of excessive prescribing; and *AB 4276 (Bronzan)*, which would have prohibited physicians from using conscious sedation except under specified circumstances, died in the Assembly Health Committee.

AB 4679 (Speier), requiring a study evaluating the hours worked by physicians in postgraduate training programs, died in the Senate Appropriations Committee.

SB 1968 (Beverly), codifying case law stating, among other things, the standard of care required of physicians,

died in the Senate Judiciary Committee.

AB 2681 (Bane), regarding academic and clinical instruction prior to post-graduate residence, and *SB 2793 (Torres)*, requiring physicians to provide diagnostic radiological services without discriminating in regards to the referring practitioner's license classification, died in the Senate Business and Professions Committee.

AB 784 (Tucker) failed passage in the Senate Business and Professions Committee on August 2. It would have eliminated the option of completing core clinical rotations in a hospital with an approved family practice residency program.

LITIGATION:

In *John Phillip Smith, M.D. v. Board of Medical Quality Assurance*, No. A038881, 88 D.A.R. 8342 (June 22, 1988), the California Court of Appeal considered a case of first impression. The appellate court was asked to determine whether section 2292 of the Business and Professions Code, which authorizes BMQA to compel a physician to undergo a professional competency examination if there is "reasonable cause" to believe that the physician is unable to practice medicine with reasonable safety and skill to patients, is constitutional. Smith appealed BMQA's order to undergo examination, contending that BMQA's refusal to afford him an administrative hearing on the issue denied him equal protection and due process. The court rejected Smith's contention and affirmed the trial court's judgment.

BMQA requested that appellant Smith, a California licensed physician, undergo a professional competency examination following a BMQA case review of five cardiac patients Smith allegedly mistreated. When Dr. Smith's request for a hearing on the issue was denied, he filed for declaratory and injunctive relief. The trial court entered judgment for BMQA, finding that a compelled competency examination is not an infringement of such a significant liberty as to require the panoply of due process rights.

Before a physician may be compelled to undergo an examination, a statutorily ordained procedure of investigation, review, and conclusion must be reached and corroborated by at least one outside medical consultant. A physician who fails to comply with BMQA's subsequent order to undergo the examination of professional competency is guilty of unprofessional conduct.

The overriding issue on appeal was

whether the "reasonable cause" proceeding set forth in section 2292 is investigative or accusatory. The court found the process to be merely investigative. As such, procedural due process rights need not be afforded. Even the fact that repeated failure of the examination constitutes evidence of professional incompetence which may lead to license revocation is not enough to transform this proceeding into an adjudicative matter.

Smith contended on appeal that his constitutional rights to equal protection were violated by BMQA's denial of a hearing to some physicians while granting it to others. The court found that section 2292(d) of the Business and Professions Code vests the Board with discretion to grant a hearing. The record did not suggest that when the Board applies this provision, it discriminates against certain physicians. Smith's equal protection challenge thus failed.

Finally, Smith claimed that the administrative process was fatally flawed because it was sufficiently vague as to allow the Board to use this procedure to escape the due process requirements attached to a more formal proceeding. Since Smith's due process contention was rejected, this contention was also found meritless.

In *Division of Medical Quality, Board of Medical Quality Assurance v. The Superior Court of Los Angeles County (James D. Dean, M.D., Real Party in Interest)*, No. B031882, 88 D.A.R. 10311 (August 8, 1988), the court ruled that an indigent physician seeking judicial review pursuant to Code of Civil Procedure section 1094.5 of an administrative decision revoking his professional license may obtain a waiver of costs for preparation of the administrative hearing transcripts, if he qualifies for *in forma pauperis* status under rule 985(b) of the California Rules of Court.

In *California Chapter of the American Physical Therapy Association, et al. v. California State Board of Chiropractic Examiners (BCE), et al.*, the plaintiffs/intervenors (including BMQA) challenge BCE's adoption of section 302 of its regulations, which defines the scope of chiropractic practice. In particular, BCE wants to include colonic irrigation in the scope of practice. To date, BCE has filed 678 interrogatories with BMQA. BMQA's subsequent request for a protective order was denied. Some interrogatories are being answered but BMQA expects continued court battles over the relevancy of the questions asked. It is projected that attorneys' fees will exceed



\$90,000 spent by each side. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 36, 65, and 119 for background information on this case.)

RECENT MEETINGS:

At its September meeting, DMQ discussed the fact that there is no systematic reporting by coroners to BMQA of deaths which may be due to physician negligence or incompetence. MQRC Chairpersons suggested that because this information is important for the Board to evaluate the competence of physicians, perhaps a mandatory reporting law is needed. Action was held until DMQ's December meeting, pending a MQRC report from its September 15 discussion.

At its September meeting, DAHP discussed draft language of a proposed regulation regarding the use of the initials "O.M.D." (Doctor of Oriental Medicine) by acupuncturists. The new regulation, section 1399.457, Title 16, California Code of Regulations, would require that an acupuncturist using the initials "O.M.D." must follow those initials with "Acupuncturist," "Licensed Acupuncturist," or "Certified Acupuncturist."

DAHP also continued its discussion of the role of physician's assistants in nursing homes. The Division favors increased use of physician's assistants in nursing homes.

FUTURE MEETINGS:

December 1-2 in San Diego.

ACUPUNCTURE EXAMINING COMMITTEE

Executive Officer:

Jonathan Diamond
(916) 924-2642

The Acupuncture Examining Committee was created in July 1982 by the legislature as an autonomous rulemaking body. It had previously been an advisory committee to the Division of Allied Health Professions of the Board of Medical Quality Assurance.

The Committee prepares and administers the licensing exam, sets standards for acupuncture schools, and handles complaints against schools and practitioners. The Committee consists of four public members and seven acupuncturists, five of whom must have at least ten years of acupuncture experience. The others must have two years of acupuncture experience and a physicians and surgeons certificate.

MAJOR PROJECTS:

Examinations. The Committee recently announced its 1989 exam dates: March 24 (written exam) and May 13-14 (practical exam). The Committee has decided that, in the future, it will administer its practical exam twice per year; and it will add a second written exam administration as soon as possible. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 64 for background information.)

LEGISLATION:

SB 1552 (Kopp) as amended August 23, makes legislative findings as to the need for healing arts professionals to have training in the characteristics, method of assessment, and treatment of patients who have or are at risk of exposure to AIDS. This bill, which was signed by the Governor on September 22 (Chapter 1213, Statutes of 1988), requires the Committee to consider including training regarding AIDS in specified continuing education requirements for licensees.

SB 1362 (Rosenthal) as amended August 15, would have required the Committee to implement an appeals process for persons who have failed the examination, and to contract with a professional examination consultant to make recommendations pertaining to the practical examination. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 64 for background information on the Committee's practical exam.) This bill was vetoed on September 30.

The following is a status update on bills discussed in CRLR Vol. 8, No. 3 (Summer 1988) at pages 65-66:

SB 840 (Torres) was signed on September 28 (Chapter 1496, Statutes of 1988). This bill includes acupuncturists as "physicians" for purposes of treating injured employees entitled to workers' compensation medical benefits until January 1, 1993.

SB 2793 (Torres) would have required physicians to provide diagnostic radiological services to all licensed health care practitioners without discrimination on the basis of the practitioner's license classification, but died in the Senate Business and Professions Committee.

SB 1046 (Montoya) as amended June 9, would have authorized the Committee to establish by regulation a system for the issuance to a licensee of a citation, which may have included an order of abatement or an order for an administrative fine, pursuant to Business and Professions Code section 125.9. This bill was dropped by its author.

SB 645 (Royce), which was signed by the Governor (Chapter 666, Statutes of 1988), authorizes BMQA's Division of Allied Health Professions to adopt regulations which establish standards for services provided by medical assistants. This bill also prohibits the employment or use of medical assistants at general acute care hospitals.

LITIGATION:

In *The Coalition for the Advancement of Acupuncture Practice, et al. v. Acupuncture Examining Committee*, the Committee filed a demurrer, which was granted without leave to amend. Plaintiffs had challenged the Committee's practical exam as being arbitrary and capricious. (For background information, see CRLR Vol. 8, No. 3 (Summer 1988) p. 66.)

RECENT MEETINGS:

At its September 17 meeting, the Committee discussed a proposal to develop a permanent examination appeals process. An interim appeals committee was established to review exam appeals for the last exam only, but the Committee wishes to establish a permanent appeals process. Criteria for appeals will be discussed at future Committee meetings.

Also at its September meeting, the Committee discussed a proposed regulatory change which may be heard by BMQA's Division of Allied Professions at its December meeting. New regulatory section 1399.457, Title 16 of the California Code of Regulations, would require that an acupuncturist using the initials "O.M.D." must follow those initials with "Acupuncturist", "Licensed Acupuncturist", or "Certified Acupuncturist". (See CRLR Vol. 8, No. 3 (Summer 1988) p. 65 for background information.)

FUTURE MEETINGS:

To be announced.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer:

Margaret J. McNally
(916) 920-6377

The Board of Medical Quality Assurance's Hearing Aid Dispensers Examining Committee (HADEC) prepares, approves, conducts, and grades examinations of applicants for a hearing aid dispenser's license. The Committee also reviews qualifications of exam applicants. The Board of Medical Quality Assurance performs the actual licensing



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of California's 2,500 hearing aid dispensers. The Committee is further empowered to hear all disciplinary matters assigned to it by the Board. HADEC has the authority to issue citations and fines to licensees who have engaged in misconduct.

The Committee consists of seven members, including four public members. One public member must be a licensed physician and surgeon specializing in treatment of disorders of the ear and certified by the American Board of Otolaryngology. Another public member must be a licensed audiologist. The other three members are licensed hearing aid dispensers.

MAJOR PROJECTS:

Assistive Listening Devices. HADEC continues to address the problem of regulating the sale of assistive listening devices (ALDs). (See CRLR Vol. 8, No. 3 (Summer 1988) p. 67 and Vol. 8, No. 1 (Winter 1988) p. 62 for background information.) At its August 19 meeting in Irvine, HADEC heard an update and report on its regulation of ALDs. HADEC is concerned with the potential for public harm from the use of unregulated ALDs, and decided to hold a November workshop on the issue. The purpose of the workshop is to receive information from industry, consumers, and physicians, so as to enable the Committee to decide on a course of action.

SPAEC Liaison Report. HADEC recently formed a subcommittee with the Speech Pathology and Audiology Examining Committee (SPAEC) to address the problem of advertising violations. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 67 for background information.) At its August 19 meeting, Committee Chair Bob Gillett presented a report prepared by the subcommittee which contained an outline of guidelines for advertising by hearing aid dispensers, but HADEC decided not to issue any guidelines at this time.

Regulation Changes. At its March 26 meeting in San Francisco, HADEC adopted changes to section 1399.141, Chapter 13.3, Title 16 of the California Code of Regulations, concerning continuing education. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 66 and Vol. 8, No. 2 (Spring 1988) p. 65 for background information.) At this writing, the rule-making file on these amendments has not yet been submitted to the Office of Administrative Law for approval.

LEGISLATION:

AB 3845 (Frizzelle) was signed by

the Governor on July 13 (Chapter 354, Statutes of 1988). This bill amends section 3365 of the Business and Professions Code, and requires hearing aid dispenser licensees, upon consummation of a sale of any new or used assistive device, to deliver a written receipt evidencing the terms of any guarantee or written warranty made to the purchaser with respect to the hearing aid. (For background information, see CRLR Vol. 8, No. 2 (Spring 1988) p. 65.)

SB 645 (Royce) was also signed by the Governor (Chapter 666, Statutes of 1988). The bill includes unspecified technical support services among the duties which medical assistants are authorized to perform under section 2069 of the Business and Professions Code, and authorizes BMQA's Division of Allied Health Professions (DAHP) to establish and administer standards for the additional technical services. HADEC opposed the bill because it potentially broadens the scope of practice of medical assistants, and HADEC fears that the bill could effectively expand the scope of practice of medical assistants into areas which may now only be performed by licensed individuals, such as hearing aid dispensers. (For background information, see CRLR Vol. 8, No. 3 (Summer 1988) p. 66.)

SB 2250 (Rosenthal) was signed by the Governor on September 21 (Chapter 1162, Statutes of 1988) and transfers the power and duty to issue licenses and adopt regulations pursuant to, and to prosecute cases involving violations of, the law relating to hearing aid dispensing from BMQA's DAHP to HADEC. (For background information, see CRLR Vol. 8, No. 3 (Summer 1988) p. 66 and CRLR Vol. 8, No. 2 (Spring 1988) p. 65.)

RECENT MEETINGS:

HADEC reviewed and discussed its existing Consumer Complaint Form at its August 19 meeting. HADEC decided to stay with its current form.

FUTURE MEETINGS:

To be announced.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Don Wheeler (916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 8,600 physical therapists. The Committee is

comprised of three public and three physical therapist members.

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapy aides (PTAs), and physical therapists certified to practice electromyography or the more rigorous clinical electroneuromyography.

The Committee also approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam. There is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

In July, Governor Deukmejian re-appointed Patricia Goodman and Norma Shanbour to the Committee. In August, the Governor appointed Carl T. Anderson to replace outgoing Committee member Carrie Schulman.

MAJOR PROJECTS:

Regulatory Changes. The Committee's proposed changes to sections 1399.54, 1399.55, and 1399.61(c) of its regulations in Chapter 13.2, Title 16 of the California Code of Regulations, have been submitted to the Office of Administrative Law (OAL) for approval.

The Committee's citation and fine regulations were submitted to OAL, but were returned unapproved for further refining. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 67 for background information.)

Liaison with Acupuncture Examining Committee. Jonathan Diamond, Executive Officer of the Acupuncture Examining Committee, attended PTEC's June 10 meeting to discuss the referral of patients by acupuncturists to physical therapists, and the overlap between physical therapy and acupuncture.

PTEC Executive Officer Don Wheeler will coordinate with Diamond to set up a general meeting with the other representatives of BMQA's allied health committees to discuss issues of common interest, and review various treatment techniques and modalities used by the various practitioners.

Scope of Practice. Committee member James Sibbet recently responded to an inquiry regarding the propriety of a PT taking blood pressure and pulse. He opined that the taking of blood pressure/pulse by a PT by conventional methods to monitor changes or to establish baseline figures for the purpose of assuring patient safety during treatment is an appropriate task for physical therapists.



The use of physical therapy modalities and procedures by occupational therapists was also discussed. Based on the Physical Therapy Practice Act and a recent Attorney General's Opinion, the Committee reiterated its opinion that it is unlawful for occupational therapists to practice physical therapy.

LEGISLATION:

SB 645 (Royce), authorizing BMQA's Division of Allied Health Professions to establish standards for functions permitted to be performed by medical assistants, was signed on August 29 (Chapter 666, Statutes of 1988).

SB 2565 (Keene) would have amended section 805 of the Business and Professions Code, which requires hospitals and hospital medical staff to report disciplinary actions taken or restrictions imposed on certain health care professionals, to establish a specified procedure for the conduct of peer review proceedings, and entitle the respondent licensee to certain procedural rights. This bill was vetoed by the Governor on September 30.

SB 2468 (Maddy), which would have created a new health facility licensing category entitled "hospice acute inpatient facility," died in conference committee.

LITIGATION:

Discovery is still ongoing in *California Chapter of the American Physical Therapy Association, et al. v. Board of Chiropractic Examiners, et al.* (consolidated case Nos. 35-44-85 and 35-24-14, Sacramento Superior Court). In the lawsuit, PTEC and BMQA have intervened as plaintiffs and challenge the Board of Chiropractic Examiners' adoption of regulatory section 302, which defines the scope of chiropractic practice. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 67 and Vol. 8, No. 2 (Spring 1988) p. 66 for background information.)

RECENT MEETINGS:

At PTEC's June 10 meeting, the Committee approved the development of a test critique format so that examinees may voluntarily evaluate the content, appropriateness, and difficulty of questions on PTEC's licensing exam.

Also at the June meeting, Committee member Norma Shanbour reported that the PTEC Task Force on Oral Exams has completed its revision of all oral exam questions. She requested that other professional Committee members review the content and format of the revised exam, which was scheduled for final Committee review at its August meeting.

Executive Officer Wheeler reported that PTEC currently licenses 10,519 PTs, 8,533 of whom reside in California. Three counties—Modoc, Sierra, and Trinity—have no PTs; 38% of the state's PTs reside in Los Angeles and Orange counties.

FUTURE MEETINGS:

December 8 in Sacramento.

PHYSICIAN'S ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The legislature established the Physician's Assistant Examining Committee (PAEC) to "establish a framework for development of a new category of health manpower—the physician assistant." Citing public concern over the continuing shortage of primary health care providers and the "geographic maldistribution of health care service," the legislature created the PA license category to "encourage the more effective utilization of the skills of physicians by enabling physicians to delegate health care tasks...."

PAEC certifies individuals as PAs, allowing them to perform certain medical procedures under the physician's supervision, such as drawing blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations and assisting in surgery. PAEC's objective is to ensure the public that the incidents and impact of "unqualified, incompetent, fraudulent, negligent and deceptive licensees of the Committee or others who hold themselves out as PAs [are] reduced."

PAEC's nine members include one member of the Board of Medical Quality Assurance (BMQA), a physician representative of a California medical school, an educator participating in an approved program for the training of PAs, one physician who is an approved supervising physician of PAs and who is not a member of any Division of BMQA, three PAs and two public members.

MAJOR PROJECTS:

Regulatory Changes. At its September 16 meeting, BMQA's Division of Allied Health Professions (DAHP) held a public hearing on a proposed change to section 1399.541(f) of PAEC's regulations, which appear in Chapter 13.8, Title 16 of the California Code of Regulations. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 68 for background infor-

mation.) The proposed amendment would clarify that a PA's duties may include those services which are usual and customary to the supervising physician's practice in a practice setting. The DAHP approved the proposed change, which will now be forwarded to the Office of Administrative Law (OAL) for approval.

At its June 24 meeting, the PAEC discussed a loophole in its current regulations under which an applicant for PA licensure who is on interim approval, and who passes the licensing exam, could theoretically practice indefinitely without ever completing the licensure process or paying licensing fees. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 63-64 for background information on interim approval.) As a result, the PAEC decided to propose adoption of a new subsection to section 1399.508 of its regulations, to provide that such applicants must complete the licensure process within ninety days of notification by the Committee that the application file is complete, or the interim approval will cease to be in effect. The PAEC was scheduled to hold a public hearing on the proposed change on October 7.

LEGISLATION:

AB 249 (Margolin), a PAEC-sponsored bill which would have provided "categorically needy recipients" with Medi-Cal benefits for care outside an institutional setting, was vetoed on September 30.

AB 4510 (Waters) was approved by the Governor and chaptered on July 15 (Chapter 385, Statutes of 1988). Another PAEC-sponsored bill, it amend section 3513 of the Business and Professions Code, authorizing the Committee to require that PAEC-approved training programs offer full credit for prior health care and experience. It also adds Article 6.5 (beginning with section 3534) to the Business and Professions Code, requiring the PAEC to create a substance abuse diversion program for PAs. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 68; and Vol. 8, No. 1 (Winter 1988) pp. 59 and 63 for background information.)

SB 645 (Royce) authorizes the DAHP to adopt regulations establishing standards for technical supportive services which may be performed by medical assistants. Opposed by the PAEC, the bill was approved by the Governor on August 27 and chaptered on August 29 (Chapter 666, Statutes of 1988). PAEC's fear regarding the passage of this legislation is that BMQA may extend the scope of medical assistant practice beyond what the PAEC believes



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it should be.

RECENT MEETINGS:

At its June 24 meeting in Long Beach, the PAEC discussed an update on the Computerized Licensing and Renewal Project. The PAEC will be receiving its own terminal soon, which will enable the Committee to access a Medical Licensing Master File. This will accelerate the license renewal process and enable consumers to request and receive public information concerning the license renewal and disciplinary status of physicians as well as PAs.

The Chairperson's report included a summary of issues discussed at various PA- and health-related organization meetings, on both the state and national level. Common themes at many of the meetings were agreement on the desire for programs stimulating minority interest in health-related fields, and disagreement regarding educational requirements for PAs.

Finally, completion of the draft of PAEC's application for a seat on the National Commission on Certification of Physician Assistants has been delayed. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 68 for background information.)

FUTURE MEETINGS:

November 29 in San Diego.

BOARD OF PODIATRIC MEDICINE

Executive Officer: Carol Sigmann (916) 920-6347

The Board of Podiatric Medicine (BPM) of the Board of Medical Quality Assurance (BMQA) regulates the practice of podiatric medicine in California. The Board licenses doctors of podiatric medicine (DPMs), administers examinations, approves colleges of podiatric medicine (including resident and preceptorial training), and enforces professional standards by disciplining its licensees. BPM is also authorized to inspect hospital records pertaining to the practice of podiatric medicine.

The Board consists of four licensed podiatrists and two public members.

MAJOR PROJECTS:

Citation and Fine Regulations. At its June 2 meeting in San Francisco, BPM reviewed and adopted proposed changes to Article 8 of Chapter 13.9, Title 16 of the California Code of Regulations. (For complete background information on this issue, see CRLR Vol. 8, No. 3 (Summer 1988) p. 68.) In April,

the Office of Administrative Law (OAL) had disapproved BPM's proposed sections 1399.698 and 1399.699 of Chapter 13.9. OAL's disapproval was based on a finding that the proposed regulations failed to comply with the clarity and consistency standards established in Government Code section 11349.1. On September 2, OAL approved the Board's June 2 version of the proposed regulations.

Section 1399.698 authorizes BPM's Executive Officer to issue citations to licensees and unlicensed persons, pursuant to authority granted under Business and Professions Code section 125.9. The changes adopted on June 2 authorize the Executive Officer to determine when and against whom a citation will be issued, as well as to issue citations containing orders of abatement and fines for violations.

OAL also found that section 1399.698(c), which establishes a range of fines to be assessed against licensees who violate specified code sections, was unclear as to what conduct is sufficient to warrant issuance of a citation. The adopted changes state that, in determining the amount of any fine to be levied, the Executive Officer shall take into consideration the factors listed in subdivision (b)(3) of section 125.9 of the Business and Professions Code. Informative descriptions follow each such provision listed in the subsection.

Section 1399.699(a) of BPM's proposal establishes an informal conference procedure. Any person who receives a citation and desires an informal conference must request the conference within ten days of service of citation. OAL previously found this section to be unclear regarding how the ten-day period is calculated. Under the June 2 revisions, the person cited may, within ten days after service or receipt of the citation, notify the Executive Officer in writing of his/her desire for an informal conference. The time allowed for the request shall begin the first day after the citation has been served or received.

In April, OAL found section 1399.699(b) to be unclear concerning the method of service and timing of notification of the Executive Officer's decision after the informal conference. The June 2 revisions clarify that the Executive Officer shall state in writing the reasons for his/her actions following the informal conference, and then serve or mail, as provided in subsection (e) of section 1399.698, a copy of his/her findings and decision to the person cited within ten days from the date of the

informal conference.

LEGISLATION:

The following is a status update on legislation discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at page 69:

SB 2542 (Montoya), which provides that BPM consultants shall not serve for more than 48 months, was signed by the Governor (Chapter 471, Statutes of 1988).

AB 4542 (Johnson, Zeltner), as amended August 8, transfers the authority to issue a fictitious name permit to any physician and surgeon or podiatrist from BMQA's Division of Licensing to the BPM as it applies to podiatrists. The bill also revises and increases certain specified fees, adds new fees, and requires BPM to fix fees in amounts not to exceed actual costs of providing the service for which the fee is collected. This bill was signed on September 24 (Chapter 1325, Statutes of 1988).

SB 2565 (Keene), as amended August 26, would have established specific procedural guidelines for the conduct of professional peer review activities and reporting thereof to the various state agencies. This bill was vetoed on September 30.

SB 2238 (Montoya), which would have modified the required qualifications of BPM public members; *AB 4387 (Bronzan)*, which would have increased the fine for excessive prescribing of drugs; and *AB 2422 (Allen, Bradley)*, concerning BPM compliance with the Medical Practice Act and compliance with the Bagley-Keene Open Meetings Act, died in committee.

RECENT MEETINGS:

At its September 23 meeting in San Diego, the Board reviewed test results from the May 1988 licensing examination. The overall examination passage rate was 84%.

Also at the September meeting, the Board changed its policy statement to reflect that a certified registered nurse anesthetist (CRNA) may provide a full range of anesthesia services for podiatric patients in inpatient or outpatient settings. BPM made this change in response to comments from the California Association of Nurse Anesthetists and others on its legal counsel's November 1987 interpretation of the CRNA's scope of practice in Business and Professions Code section 2827. Previously, the Board's Scope of Practice Committee had determined as a matter of policy that a podiatrist may utilize a CRNA to administer only local anesthesia in the podiatrist's office or other outpatient



setting, and may utilize a CRNA to provide general anesthesia only when the podiatric procedure is performed in a general acute care facility.

Also at the September meeting, the Board reiterated that no diagnostic or surgical ankle procedures are to be performed in free-standing surgery centers. These procedures must be performed only in a facility which functions under the governing authority of a hospital and its medical staff, which acts to regulate peer review activities.

The issue of whether to delete the mandatory CPR requirement for license renewal because of the possibility of contracting AIDS was deferred until the December meeting, following an assessment of the pros and cons of this requirement.

FUTURE MEETINGS:

- December 9 in Los Angeles.
- March 3 in Sacramento.
- June 9 in San Diego.
- September 22 in San Francisco.

PSYCHOLOGY EXAMINING COMMITTEE

Executive Officer: Thomas O'Connor (916) 920-6383

The Psychology Examining Committee (PEC) is the state licensing agency for psychologists. PEC sets standards for education and experience required for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, conducts disciplinary hearings, and suspends and revokes licenses. PEC is composed of eight members, three of whom are public members. On July 15, Governor Deukmejian reappointed Frank V. Powell to the Committee. Dr. Powell is a psychology professor at Fresno State University.

MAJOR PROJECTS:

Revised Child Abuse Regulations Approved. A modified version of section 1387.7, Title 16 of the California Code of Regulations, was adopted by the PEC and recently approved by the Office of Administrative Law (OAL). The regulations require psychologists to receive training in child abuse assessment and reporting. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 69; Vol. 8, No. 1 (Winter 1988) p. 65; and Vol. 7, No. 4 (Fall 1987) p. 59 for background information.)

The original version adopted by the

PEC, which precluded any exemptions from the child abuse training requirements, was disapproved by OAL in April. OAL stated that a proposed prohibition on any exemptions from requirements conflicted with section 28 of the Business and Professions Code. Section 28 provides that the PEC must exempt any applicant who can show that there is no need for a particular type of training due to the nature of their practice. The PEC removed the proposed ban on exemptions and resubmitted the regulations. The modified version was approved by the OAL.

Proposed Regulatory Changes. The PEC recently adopted and sent a newly modified proposal for other regulation changes to the OAL. The sections involved are 1387(o)(1) and 1391.5 in Title 16 of the California Code of Regulations. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 65 and Vol. 7, No. 4 (Fall 1987) p. 59 for background information.) The proposal would affect the experience required for a licensed psychologist or a board-certified psychiatrist to provide "suitable alternate supervision" over a psychological assistant. The proposed regulations would allow alternate supervision established before January 1, 1989, to continue. On or after January 1, 1989, a psychologist licensed in another state would not be able to apply to supervise a psychological assistant he/she had not previously supervised unless the psychologist has at least three years of post-licensure practice. The proposal is pending at the OAL.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 8, No. 3 (Summer 1988) at page 70 and Vol. 8, No. 2 (Spring 1988) at page 68:

AB 3768 (Chacon), as amended August 2, expands communication confidentiality to a patient and a psychological intern, marriage, family, and child counselor (MFCC) trainees, interns, and persons exempt from Psychology Licensing Law. However, no such privilege of confidentiality applies in any criminal case. This bill has been chaptered (Chapter 509, Statutes of 1988).

AB 4182 (Moore), which would have required that any person applying for a license or renewal of a license as a psychologist, clinical social worker, or MFCC must show evidence of cross-cultural training, died in committee.

SB 2107 (Rosenihal) would have authorized MFCCs and licensed clinical social workers to provide the second

signature required to certify an involuntary confinement in a mental institution. This bill failed passage in the Assembly Health Committee.

SB 2693 (Torres) requires that Department of Corrections employees who render mental health services be licensed health practitioners. This bill was signed by the Governor (Chapter 473, Statutes of 1988).

AB 3322 (Duplissee), as amended August 8, authorizes the PEC to raise its examination fee to \$150. This bill was signed by the Governor on September 15 (Chapter 929, Statutes of 1988), and became effective immediately.

AB 2872 (Jones), as amended June 20, allows for an extension of a waiver of licensure. The extension may be granted to persons providing mental health services under the Short-Doyle Act, and employed as clinical social workers or MFCCs on a part-time basis. The extension may be proportionate to the years of uninterrupted employment but may not exceed five years. This bill was signed by the Governor (Chapter 509, Statutes of 1988).

AB 4016 (Filante), as amended June 21, authorizes the issuance of a fictitious name permit by the PEC. Practicing under a fictitious name without a permit is prohibited. This bill was signed by the Governor (Chapter 800, Statutes of 1988).

RECENT MEETINGS:

On September 24 in Burlingame, the Subcommittee on Legislation announced its intent to begin an exploratory study on possible standardization of requirements for schools offering degrees in psychology. The purpose would be to upgrade or eliminate "diploma mills."

The Committee reasserted its desire to change its name to the Board of Psychology. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 68 for background information.) The name change must be approved by the legislature and signed by the Governor.

FUTURE MEETINGS:

To be announced.

SPEECH PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards (916) 920-6388

The Board of Medical Quality Assurance's Speech Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech patholo-



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gists, three audiologists and three public members (one of whom is a physician).

The Committee registers speech pathology and audiology aides and examines applicants for licensure. The Committee hears all matters assigned to it by the Board, including, but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

Betty Williams, a South San Francisco business owner, and Ellen Rosenblum-Mosher, director of audiology of a San Francisco medical group, were recently reappointed to the Committee by Governor Deukmejian.

MAJOR PROJECTS:

Speech Pathology and Audiology Aide Regulations. On July 8, SPAEC held a hearing in San Diego to hear public comment concerning several proposed changes to its regulations, which appear in Chapter 13.4, Title 16 of the California Code of Regulations. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 70-71 for detailed background information.) Changes to sections 1399.170, 1399.171, 1399.172, 1399.174, 1399.175, and 1399.176 will provide greater specificity and stricter requirements concerning registration, supervision, and training programs for speech pathology and audiology aides.

In July, the Committee heard public comment concerning proposed section 1399.172(c) of the regulations. This section concerns a requirement that the supervisor of a speech pathology or audiology aide be physically present while the aide is assisting with patients, unless an alternative plan of supervision has been approved by the Committee. The comment reflected concern about the "physically present" requirement, and suggested that the section be changed to require the supervisor to be present "on the premises." After discussing this proposal, the Committee determined that this change would create an undesirable level of ambiguity in the regulation. The Committee will respond in writing to this one unfavorable comment, explaining the reasons for not adopting the suggested change. Other comments received by the Committee, both in person and in writing, have been favorable toward the proposed changes.

The regulatory hearing was continued at the Committee's meeting on September 9 in South San Francisco. No further comments were made; thus, the Committee adopted the proposed regula-

tions, which will now be forwarded to the Office of Administrative Law for review.

Impedance Testing and Hearing Aid Dispensers. SPAEC Chair Dr. Philip Reid reported that although Robert E. Gillett, Chair-elect of the Hearing Aid Dispensers Examining Committee (HADEC), reported there is no fear that hearing aid dispensers will be performing tympanometry, a procedure normally confined to audiologists, at least one hearing aid manufacturer is selling equipment used in this procedure to hearing aid dispensers.

Dr. Reid expressed his belief that the Committee must determine whether this procedure is restricted to audiologists. The California Speech and Hearing Association opposes the use of this procedure by hearing aid dispensers for diagnostic purposes unless they hold an audiology license.

Dr. Reid suggested forming an ad hoc committee composed of two members of SPAEC and two members of HADEC to discuss this matter. The formation of this committee was placed on the agenda for SPAEC's November 4 meeting and HADEC's November 5 meeting.

LEGISLATION:

SB 645 (Royce), which expands the authority of BMQA's Division of Allied Health Professions to define the scope of practice of medical assistants, was chaptered on August 29 (Chapter 666, Statutes of 1988). (See CRLR Vol. 8, No. 3 (Summer 1988) p. 71 and Vol. 8, No. 2 (Spring 1988) pp. 68-69 for more information.)

AB 3845 (Frizzelle) was signed by the Governor (Chapter 354, Statutes of 1988). This bill requires all new and used assistive devices sold at retail in California to be accompanied by the retail seller's written receipt evidencing the terms of any guarantee or written warranty made to the purchaser with respect to the hearing aid(s). This receipt must include a statement, in part, that any examination made by a licensed hearing aid dealer or fitter, "is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state, or by licensed audiologists and therefore must not be regarded as medical opinion or professional advice."

RECENT MEETINGS:

On September 9 in San Francisco, the Committee continued its discussion of the procedure of nasal-endoscopy. (See CRLR Vol. 8, No. 2 (Spring 1988)

p. 69 for more information.) Committee member Dr. Betty McMicken reported she had written to a major malpractice insurance carrier to see whether the procedure would be covered. After a series of clarifying correspondence, the insurance company concluded that the procedure is covered only if a licensed physician passes the scope, with the speech pathologist standing by. The procedure is not covered if the speech pathologist actually passes the scope him/herself.

FUTURE MEETINGS:

To be announced.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel (916) 445-8435

The Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator. The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a 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.

On August 18, Governor Deukmejian reappointed the following members to BENHA: John N. Colen of Sacramento, Dorothy W. Flint of Fremont, and Dr.