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REGULATORY AGENCY ACTION

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, and is not a medical and audiology 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 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 proprietors of 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.
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REGULATORY AGENCY ACTION

Donald R. Henderson of Los Angeles.

MAJOR PROJECTS:

Implementation of AB 1834. BENHA continues to work toward compliance with the requirements of AB 1834 (Connelly). (For details on AB 1834, see CRLR Vol. 8, No. 3 (Summer 1988) pp. 71; Vol. 8, No. 2 (Spring 1988) p. 69; and Vol. 8, No. 1 (Winter 1988) pp. 66-67.) BENHA’s half-time Disciplinary Action Coordinator, Denise Sarro, has updated and organized the disciplinary files, and currently performs initial reviews of incoming disciplinary actions.

At its June 20-21 meeting in San Diego, the Board examined in detail the policies and procedures outlined by the AB 1834 Implementation Committee. With some minor changes, the plan was adopted at the Board’s August 11 meeting in San Francisco. The Board adopted two major policies: (1) it will ensure that all regulatory agencies, providers, and consumers are aware of nursing home administrators who have been placed on probation or have had their licenses suspended or revoked within the last three years; and (2) it will review all enforcement actions taken by the Department of Health Services (DHS) (which investigates complaints against nursing homes, as opposed to the nursing home administrator) to determine whether collateral disciplinary action should be taken against the administrator(s) responsible for the facility’s operation.

The plan also sets forth a procedure to be followed by the Board if it receives notice of a DHS action which also warrants remedial or disciplinary action by the Board against the administrator. The Disciplinary Action Coordinator (DAC) and the Executive Officer (EO) will review the file and concur on a proposed remedial/disciplinary action. The administrator will be notified of the proposed action and given thirty days to respond. If the administrator responds, that information will be considered by the DAC and EO in determining the type of action to recommend to the Board.

In determining appropriate remedial/disciplinary action, the Board will utilize specified criteria. For example, if the DHS has issued a temporary suspension order, an accusation for facility license revocation, or a final decertification of a facility from participation in Medicare or Medicaid programs, the Board will file an accusation to revoke the license of the administrator in question. The Board will then apply specified criteria to determine the administrator’s responsibility in relation to the enforcement action taken by the DHS.

The plan also outlines certain remedial actions which the Board may take when disciplinary action against the administrator is deemed unwarranted. Remedial actions consist of three primary components: informal telephone counseling, which will be documented at the Board and placed in the administrator’s disciplinary file; telephone counseling by the EO with the administrator; and a letter of warning (also placed in the administrator’s file). According to Don Chang, the Board’s legal counsel, neither the letter of warning nor the papers documenting the telephone counseling will be available to the public upon inquiry.

Finally, the plan outlines actions to be taken by Board staff in response to the issuance of Class “A” and “AA” citations by the DHS against facilities. The plan requires that a “Response to Enforcement Action” form be mailed to the subject licensee by the Board, and a continual review and monitoring of the licensee’s disciplinary file based upon specified criteria, to detect a pattern of poor performance and/or the need to initiate Board remedial/disciplinary action against the licensee.

LEGISLATION:

AB 3687 (Bates) requires licensees operating residential care facilities for the elderly to bar from the facility any person convicted of the infliction of pain or mental suffering on, or endangering the health of, elderly or dependent adults. This bill was signed by the Governor on September 12 (Chapter 796, Statutes of 1988).

AB 3652 (Friedman), which would have required that any resident of a nursing home shall receive notice of and a hearing on the facility’s intention to terminate the tenancy and the basis for the action, died in the Senate Appropriations Committee.

AB 3624 (Manggan) requires a nursing home to reimburse or replace patients’ lost or stolen property when the facility fails to make reasonable efforts to safeguard resident property. This bill was signed by the Governor on September 7 (Chapter 750, Statutes of 1988).

LITIGATION:

The Attorney General has determined that a home-care companion, hired to perform services in an employer’s home, whether certified as a nurse assistant or home-health aide or uncertified and unlicensed, may lawfully administer nonprescription drugs but not controlled substances to the employer in the employer’s home. The companion may not lawfully engage in nasogastric tube or gastrostomy feeding of the employer in the employer’s home. Opinion of John K. Van de Kamp, No. 87-106, 88 Daily Journal D.A.R. 7951 (June 15, 1988).

RECENT MEETINGS:

At its June 20-21 meeting in San Diego, the Board discussed the meeting of the National Association of Boards of Examiners of Nursing Home Administrators. This meeting resulted in a list of recommendations to the Health Care Finance Administration regarding minimum educational and experience requirements for professional licensure as a nursing home administrator. The recommendations include a bachelor’s degree requirement for administrators, a mandatory national exam, and an administrator-in-training program.

The results of the May 18 exam disclosed failure rates of 45% on the state exam, and 68% on the national exam.

FUTURE MEETINGS:

To be announced.

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger (916) 739-4131

The Board of Optometry establishes and enforces regulations pertaining to the practice of optometry. The Board is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board’s goal is to protect the consumer patient who might be subjected to injury resulting from unsatisfactory eye care by inept or untrustworthy practitioners.

The Board consists of nine members. Six are licensed optometrists and three are members of the community at large.

On August 4, the Board selected Karen Ollinger as its Executive Officer. Ollinger previously served as the Board’s interim Executive Officer since March 1, following the resignation of Michael Abbott (see CRLR Vol. 8, No. 2 (Spring 1988) p. 71 for background information).

MAJOR PROJECTS:

Continuing Education Regulation Rejected. On September 12, the Office of Administrative Law (OAL) approved a large rulemaking package approved by the Board last spring, after an initial public hearing on October 29,

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