



# REGULATORY AGENCY ACTION

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.



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) p. 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 the Medical or Medicare programs, the Board will file an accusation to revoke the license of the administrator in question. The Board will then apply specified cri-

teria 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 (Hannigan)* 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 un-

licensed, may lawfully administer non-prescription drugs but not controlled substances to the employer in the employer's home. The companion may not lawfully engage in nasogastric tube or gastostomy 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) disapproved a large rulemaking package approved by the Board last spring, after an initial public hearing on October 29,