



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,



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1987. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 72 and Vol. 8, No. 2 (Spring 1988) p. 70 for background information.) The package would have added three new sections and amended four existing sections of the Board's regulations, which appear in Chapter 15, Title 16 of the California Code of Regulations.

The disapproved package included section 1536, the Board's continuing education regulation, portions of which were rejected for lack of clarity. The other sections rejected include new section 1526 (CPR certification as a condition of licensure or license renewal) and new section 1565 (requiring specified information to be included in optometric prescriptions); and amendments to sections 1530 (to delete the definition of the term "section"), 1531 (describing the Board's exam), 1532 (requiring passage of the exam before registration by the Board), 1533 (regarding applicants' inspection of exam papers), and 1535 (requiring successful completion of the National Board Exam as a condition of eligibility to take the Board's exam). The Board plans to resubmit these regulations.

Other Regulatory Changes. After a public hearing on May 25, the Board approved, with some modifications, two other proposed changes to its regulations. New section 1533.1 would establish an appeals procedure for applicants who fail the Board's exam; and an amendment to section 1561(b), regarding exam requirements for optometrists who use topical pharmaceutical agents, would provide that successful completion of an equivalent pharmacology examination administered by the Board or by an accredited school of optometry is an acceptable alternative to passage of the National Board Examination on Optometry pharmacology examination. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 72 for background information.) Minor changes to these proposed regulations were released on September 30 for a fifteen-day period, after which they will be submitted to OAL for approval.

Fictitious Name Policy. At its July meeting, the Board approved a policy for approval of fictitious name applications. Among other things, the policy requires that all fictitious names include either "optometry" or "optometric"; and either a geographical locator (such as "Sacramento Optometry") or the family name of at least one present or past practitioner at that location. The words "group" or "associates" may be used only where two or more optometrists

practice together at one location; and words such as "superior", "optimum", or "professional"—that is, words which suggest exceptional proficiency—may not be used. The Board plans to publish the policy as a proposed regulation in December or early 1989.

Consumer Education Pamphlet. For the past several months, the Board's Consumer Education Committee has been drafting a consumer brochure. Initially, the pamphlet included a joint statement from the Board and the California Optometric Association (COA), but at its July meeting, the Board decided not to include that statement. This decision followed the Board's receipt of comments on the draft brochure by Kitty Juniper, President of Eyexam 2000, who applauded the Board's efforts to publish the brochure, but protested the pamphlet's alleged blurring of the distinction between the Board and the COA. In particular, Ms. Juniper called upon the Board to clarify that (1) only the Board, and not COA, has authority to enforce state laws and Board regulations against licensed optometrists; (2) the Board has no authority to enforce the code of ethics of the American Optometric Association, which was included in initial versions of the pamphlet; and (3) the Board is in no way affiliated with the COA, and fully licensed optometrists may be members of optometrist trade associations other than the COA.

At this writing, the pamphlet is in the final draft stage, and the Board is working to address these and other changes suggested by the Department of Consumer Affairs.

LEGISLATION:

The following is a status update on bills discussed in CRLR Vol. 8, No. 3 (Summer 1988) at page 72 and Vol. 8, No. 2 (Spring 1988) at page 71:

AB 2824 (Polanco) allows specified licensed persons other than optometrists to be minority shareholders, officers, directors, and professional employees of optometric corporations. This bill, sponsored by the COA, was signed by the Governor on August 23 (Chapter 507, Statutes of 1988).

AB 3549 (Jones), which would have allowed the Board of Optometry to recover its costs from the respondent when the Board prevails in an administrative disciplinary action, was referred for interim study on November 2 by Senator Joseph Montoya.

SB 2103 (McCorquodale), which would have prohibited any licensed optometrist, physician and surgeon, or

registered contact lens dispenser from selling or dispensing a contact lens by mail unless the licensee has personally fitted the lens to the patient, is scheduled for interim study by the Senate Business and Professions Committee in January.

The following bills died in committee or were dropped by their authors:

AB 32 (Bane), which would have enacted as state law several federal trade regulations prohibiting optometrists from engaging in certain acts in connection with the performance of eye examinations; **AB 573 (Bates)**, which would have required the Board to hold its licensure examination at least twice per year; **AB 3551 (Jones)**, which would have allowed a person licensed to practice optometry in another state to be registered as a licensed optometrist in California by reciprocity; and **AB 3738 (Jones)**, regarding standards for approval of fictitious name permits for optometric practices.

FUTURE MEETINGS:

December 12-13 in San Diego.

BUREAU OF PERSONNEL SERVICES

Chief: Jean Orr
(916) 920-6311

The Bureau of Personnel Services was established within the Department of Consumer Affairs (DCA) to regulate those businesses which secure employment or engagements for others for a fee. The Bureau regulates both employment agencies and nurses' registries. Businesses which place applicants in temporary positions or positions which command annual gross salaries in excess of \$25,000 are exempt from Bureau regulation; similarly, employer-retained agencies are also exempt from Bureau oversight.

The Bureau's primary objective is to limit abuses among those firms which place individuals in a variety of employment positions. It prepares and administers a licensing examination and issues several types of licenses upon fulfillment of the Bureau's requirements. Approximately 900 agencies are now licensed by the Bureau.

The Bureau is assisted by an Advisory Board created by the Employment Agency Act. This seven-member Board consists of three representatives from the employment agency industry and four public members. All members are appointed for a term of four years. As