



REGULATORY AGENCY ACTION

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



of this writing, seats for one public and two industry members remain vacant.

MAJOR PROJECTS:

The Bureau Struggles for Survival. The number of employment agencies regulated by the Bureau decreased drastically as a result of AB 2929 (Chapter 912, Statutes of 1986). That bill, which became effective on July 1, 1987, exempts employer-retained agencies from the Bureau's oversight. The number of licensees regulated by the Bureau has decreased as a result, with a major decline occurring in April 1988, which was the renewal month for many now-exempt licenseholders. In April 1988, the number of Bureau licensees dropped 58% to approximately 800. (For more information on the effects of AB 2929, see CRLR Vol. 7, No. 2 (Spring 1987) p. 64 and Vol. 7, No. 1 (Winter 1987) p. 56.)

Under the Employment Agency Act, licensing fees constitute the Bureau's sole source of funding. Consequently, AB 2929 caused a significant drop in the Bureau's funding. But because 90% of the complaints received by the Bureau concern applicant-retained agencies and not employer-retained agencies, AB 2929 did not correspondingly reduce the Bureau's workload. In June, the Department of Consumer Affairs, citing the Bureau's inability to fulfill its mandate, unsuccessfully attempted to abolish the Bureau through amendments to AB 4145 (Wright) (see CRLR Vol. 8, No. 3 (Summer 1988) p. 72 for background information).

Assemblymember Wright originally drafted AB 4145 to exempt from the Bureau's control all "employment counseling services" which charge fees strictly on an hourly basis. The original version also would have declared that prepaid employment agencies are against public policy. Bureau Chief Jean Orr favors the latter provision because, although prepaid agencies constitute only 7% of the Bureau's licenses, their misconduct creates a disproportionately large share of the complaints received by the Bureau. AB 4145 was amended on April 25, however, to drop the prohibition against prepaid employment agencies.

In June, the DCA worked with Assemblymember Wright to draft an amendment to AB 4145 which would have formally abolished the Bureau. The amendment was put before the Assembly on June 20 and rejected by a 32-18 vote. The rest of the bill passed the Assembly and was sent to the Senate. Upon adjournment of the legislature, the issues

raised by AB 4145 were referred for interim study by the Senate Business and Professions Committee. The Committee scheduled a public hearing on the future of the Bureau for November 2 at Alhambra City Hall.

Bureau Chief Orr states that the Bureau, despite its reduced funding, is fully able to serve the public during the upcoming fiscal year. She cites the success of the Bureau's enforcement program in collecting more than \$110,000 in refunds for consumers during the last fiscal year (see CRLR Vol. 8, No. 3 (Summer 1988) p. 73 and Vol. 8, No. 2 (Spring 1988) p. 72 for more information), and notes the Bureau's handling of 2,000 formal written complaints with its staff of only four individuals. At the November 2 hearing, Orr will argue for measures to ensure the Bureau's effectiveness beyond June 30, 1989.

The DCA states that the Bureau, at its present level of funding, cannot effectively serve the public beyond November 1988. DCA Deputy Director Michael Vader sees three alternatives to remedy this problem: (1) increase Bureau licensing fees; (2) seek legislation to expand the Bureau's jurisdiction to undo the effects of AB 2929; or (3) abolish the Bureau. The Department has no stated preference for any of these alternatives, but Vader says the Department is prepared to draft and promote legislation which would protect consumers if the Bureau is abolished. Also, the Department hopes to have legislation reintroduced which would abolish prepaid employment agencies.

Assemblymember Wright's office is refraining from taking a position on the future of the Bureau. According to Legislative Consultant Jamie Khan, Assemblymember Wright will monitor the testimony at the Senate Committee's November 2 hearing before she takes an official position on the Bureau's status.

LEGISLATION:

The following is a status update on measures reported in detail in CRLR Vol. 8, No. 3 (Summer 1988) at page 73:

AB 4554 (Roybal-Allard) was amended on August 16. The amended version no longer requires foreign labor agents to be licensed by the Bureau. The Bureau is not affected by any other portion of the bill, which was signed on September 27 (Chapter 1450, Statutes of 1988).

SB 2471 (Montoya), which would have allowed the award of attorneys' fees and costs for certain court actions against nurses' registries, died in committee.

AB 4007 (Lancaster), the Department of Consumer Affairs' omnibus bill, was amended on June 30 to delete all references to the Bureau.

AB 4145 (Wright) was amended to delete most references to the Bureau. An interim hearing on the bill was scheduled for November 2 (see *supra* MAJOR PROJECTS).

FUTURE MEETINGS:

To be announced.

BOARD OF PHARMACY

Executive Officer: Lorie G. Rice
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The Board of Pharmacy grants licenses and permits to pharmacists, pharmacies, drug manufacturers, wholesalers and sellers of hypodermic needles. It regulates all sales of dangerous drugs, controlled substances and poisons. To enforce its regulations, the Board employs full-time inspectors who investigate accusations and complaints received by the Board. Investigations may be conducted openly or covertly as the situation demands.

The Board conducts fact-finding and disciplinary hearings and is authorized by law to suspend or revoke licenses or permits for a variety of reasons, including professional misconduct and any acts substantially related to the practice of pharmacy.

The Board consists of ten members, three of whom are public. The remaining members are pharmacists, five of whom must be active practitioners. All are appointed for four-year terms.

MAJOR PROJECTS:

Continuing Education Regulations. In May, the Board approved several changes to its continuing education (CE) regulations, including consolidating CE course descriptions into one category and delegating the approval of CE providers to accreditation agencies. These changes were the third revision of the Board's CE regulations, necessary because of two past disapprovals by the Office of Administrative Law (OAL). (See CRLR Vol. 8, No. 3 (Summer 1988) p. 73; Vol. 8, No. 2 (Spring 1988) p. 73; and Vol. 8, No. 1 (Winter 1988) pp. 68-69 for background information.)

The Board submitted these changes, which amend sections 1732 through 1732.7, Chapter 17, Title 16 of the California Code of Regulations (CCR), to the OAL for review on May 27. In July, the OAL once again disapproved the