



of Consumer Affairs.

Members of the State Bar of California, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from registration.

An Administrator, appointed by the Governor and confirmed by the Senate, enforces the provisions of the Tax Preparer Act. He/she is assisted by a nine-member State Preparer Advisory Committee which consists of three registrants, three persons exempt from registration, and three public members. All members are appointed to four-year terms.

#### MAJOR PROJECTS:

*Continuing Education Review.* At its July and September meetings, the Advisory Committee discussed its duty under Business and Professions Code section 9891.50(b) to "advise the administrator as to the suitability of proposed continuing education programs and activities and...upon request as to the interpretation of gross negligence and recommend disposition of consumer complaints." Administrator Don Procida advised the Committee that its continuing education (CE) regulations are outdated and must be substantially rewritten.

The Committee discussed the CE programs of other professional licensing agencies, such as the Board of Accountancy and the Board of Registered Nursing. The Committee discussed several issues, including the desirability of written and audio-video materials in CE classes, and of correspondence courses in general; a minimum number of required hours in federal and state tax; and approval of CE providers, including a bond requirement.

The Committee is in the process of formalizing its CE proposal and plans to discuss it at its next meeting.

*Regulatory Changes.* On August 16, the Office of Administrative Law approved the Program's proposed amendment to section 3230, Chapter 32, Title 16 of the California Code of Regulations, which will increase the registration and renewal fees for tax preparers. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 81 for background information.)

#### LEGISLATION:

*SB 91 (Boatwright)* would have established a Tax Practitioner Program under the Franchise Tax Board. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 81; Vol. 8, No. 2 (Spring 1988) p. 78; and Vol. 8, No. 1 (Winter 1988) p. 73

for details.) This bill died in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*SB 1009 (Montoya)* expands the power of the Board of Accountancy to revoke, suspend, or refuse to renew any permit or certificate for fiscal dishonesty or breach of fiduciary responsibility. An early version of this bill included tax preparers, but it was amended on June 14 to exclude them from the scope of the bill. SB 1009 has been signed by the Governor (Chapter 728, Statutes of 1988).

*AB 2833 (Katz and Harris)* establishes a "Taxpayers' Bill of Rights" to govern the assessment, audit, and collection of taxes administered by the State Board of Equalization. The bill requires the Board to establish the position of Taxpayers' Rights Advocate, who shall be responsible for facilitating resolution of taxpayer complaints and problems regarding unsatisfactory treatment of taxpayers by Board employees. The Board is also responsible for developing certain educational programs, including the publication of brief and comprehensive statements in simplified terms regarding the rights and obligations of the Board and the taxpayers, and the systematic identification of areas of recurrent taxpayer noncompliance. This bill was signed by the Governor on September 30 (Chapter 1574, Statutes of 1988).

*AB 2788 (Harris and Katz)* is very similar to AB 2833, except that it applies to the Franchise Tax Board instead of the Board of Equalization. (The FTB covers California sales and use taxes, whereas the Board of Equalization covers personal income tax and bank and corporation tax.) This bill was also signed by the Governor on September 30 (Chapter 1573, Statutes of 1988).

#### RECENT MEETINGS:

At the Committee's July meeting, Assistant Administrator Al Geiger reported on the Program's enforcement activities during fiscal year 1987-88: 297 complaints were handled; the Department of Consumer Affairs' Division of Investigation handled the investigation of 142 cases; of completed investigations, 80 cases await action by Program staff, 2 cases are pending at the Attorney General's Office, and 12 have been referred to the district attorney's office for civil or criminal action; the Program closed 192 cases and issued citations in 20 cases.

#### FUTURE MEETINGS:

To be announced.

## BOARD OF EXAMINERS IN VETERINARY MEDICINE

*Executive Officer: Gary K. Hill*  
(916) 920-7662

The Board of Examiners in Veterinary Medicine (BEVM) licenses all veterinarians, veterinary hospitals, animal health facilities, and animal health technicians (AHTs). All applicants for veterinary licenses are evaluated through a written and practical examination. The Board determines through its regulatory power the degree of discretion that veterinarians, animal health technicians, and unregistered assistants have in administering animal health care. All veterinary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members, including two public members. The Animal Health Technician Examining Committee consists of three licensed veterinarians, one of whom must be involved in AHT education, three public members and one AHT.

Dr. Arthur O. Hazarabedian was recently reappointed to the BEVM by Governor Deukmejian. Dr. Hazarabedian is a private practice veterinarian from Lafayette.

#### MAJOR PROJECTS:

*Teeth Cleaning Controversy.* At its September meeting, BEVM once again took up the issue of proposed section 2037, Chapter 20, Title 16 of the California Code of Regulations (CCR). The new section would clarify the term "dental operation" to include the use or application of any instrument or device to any portion of an animal's teeth or gums for specified purposes, including preventive dental procedures such as the removal of plaque or tartar from an animal's teeth. The section would allow "dental operations" to be performed only by a licensed veterinarian or a veterinarian-supervised AHT. BEVM has become concerned about the number of unlicensed individuals providing teeth cleaning services without formal training in animal dentistry.

This issue has generated intense debate. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 81-82 and Vol. 8, No. 2 (Spring 1988) p. 79 for background information.) Several veterinarians present at the September meeting voiced



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concern that untrained persons performing teeth cleaning services not only do an inadequate job, but also lull the pet owner into a false sense of security, because they believe their pet has received a full dental examination and cleaning. The vets also objected to the use of medical instruments by unlicensed persons in performing this procedure.

The veterinarians did not go unchallenged, however. Several pet groomers—the group most affected by the proposed regulatory change—countered that the vets are trying to monopolize every service involving animal care. The groomers noted that the teeth cleaning service is never billed as a dental operation, but rather as a cosmetic service for the pet. Usually the service is performed for pet owners who show their animals. The groomers challenged the vets to point to an instance where an animal has been harmed by the service provided. When asked by a Board member if a groomer could perform cosmetic teeth cleaning adequately and safely, one vet answered “yes”.

BEVM's task force on this issue, formed at the Board's May meeting, had previously recommended that the Board adopt modified language which would allow lay persons to use hand scalers past the gum line. This alternative was proposed by public Board member Dennis Warren in a letter to other Board members. Further, the task force proposed that anyone performing tartar removal services outside a veterinary hospital be required to post a notice stating that the cleaning is not complete.

At BEVM's September meeting, the Board voted to abolish the task force and to extend the time period for further written comments on the proposed regulation; it set its October 28 meeting as the date when this issue would finally be resolved.

*OAL Rejects Citation and Fine Regulations.* At its June 29 meeting, the Board adopted proposed section 2043, Title 16 of the CCR, which would have established a system of civil penalties for citations issued by the Board pursuant to Business and Professions Code section 4875.2. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 83 and Vol. 8, No. 2 (Spring 1988) p. 79 for background information.)

On August 17, the Office of Administrative Law (OAL) rejected BEVM's adoption of section 2043. OAL based its rejection on two criteria: (1) the adopted regulation failed to meet the necessity standard because the rulemaking record did not justify the amount of the various

civil penalties established; and (2) the rulemaking file failed to comply with the procedures of the Administrative Procedure Act (APA) in that the notice period for the proposed regulation exceeded the APA's one-year maximum.

While the first issue is easily corrected, BEVM is concerned about OAL's second ground for rejection, and believes that OAL gave its legal counsel, Don Chang, the wrong information. Government Code section 11346.4(a)(5) provides that the effective period of a notice of proposed regulations published in the *Notice Register* is one year. BEVM published its notice to adopt section 2043 on July 17, 1987; and submitted its completed rulemaking package on the section to OAL on July 18, 1988. The issue centers on whether a notice period which ends on a Sunday may be extended to the next business day without violating section 11346.4(a)(5). Mr. Chang claims that when he approached OAL on the issue, he was told that no violation would occur. Because of this situation, BEVM decided at its September meeting to appeal OAL's decision to the Governor.

*AHT Regulations Proposed and Approved.* At a hearing on July 8, the Board considered the proposed adoption of two new sections to its regulations. New section 1068.5 specifies a procedure whereby an AHT applicant who possesses a combination of coursework at the postsecondary education level and practical experience under the strict supervision of a licensed veterinarian would be eligible to take the AHT examination. New section 2068.6 sets forth a procedure whereby an AHT applicant who is licensed as an AHT in another state and who possesses practical experience under the direct supervision of a licensed veterinarian would be eligible to take the AHT exam.

At its September meeting, the BEVM adopted these proposed sections, and has submitted the rulemaking file to OAL for approval. The Board hopes these new regulations will ease the licensing requirements for qualified individuals yet still preserve the integrity of the licensing program.

## LEGISLATION:

*AB 2756 (O'Connell)* expands the scope of immunity from civil liability for vets who report instances of animal abuse. The measure is designed to eliminate the fear of lawsuits for vets if they report their suspicions of animal cruelty or abuse to the proper authorities (see CRLR Vol. 8, No. 3 (Summer 1988) p.

82 for background information). AB 2756 was signed by the Governor on September 12 (Chapter 810, Statutes of 1988).

*AB 4019 (Filante)*, as amended on August 9, requires biennial renewal of all BEVM licenses and registrations; and requires applications for BEVM licensure or registration renewal to contain a specified statement as to conviction of a felony, professional discipline, or law violation. This bill also authorizes BEVM to make necessary inquiries of applicants for licensure or registration renewal and conduct an investigation to determine whether cause for disciplinary action exists. AB 4019 was signed by the Governor on September 20 (Chapter 1007, Statutes of 1988).

## LITIGATION:

In *Hall v. Kelley*, Linda Hall, a dyslexic, has sued BEVM for its alleged failure to provide an adequate setting for her to take the veterinarian's practical exam. She took the examination three times and passed it on her third attempt. However, because she could not practice for a period of time because she failed the exam twice, she filed suit, claiming that the exam conditions were unfair to her. She has asked the court for lost wages and costs. BEVM is seeking a dismissal of the action.

## RECENT MEETINGS:

The Board has reauthorized its Alcohol and Drug Diversion Program for animal health professionals who suffer from substance abuse. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 82 and Vol. 8, No. 2 (Spring 1988) p. 79 for background information.) BEVM is pleased with the results of the program so far. However, Board members stress that they would like to see a higher percentage of abusing professionals take advantage of this program. It has been estimated that 10% of the professionals in the animal care field are substance abusers, yet only one-half of 1% of these people will take advantage of this program. One identifiable problem with this program is its cost—\$1,600 for enrollment. However, the Board stressed at its September meeting that no person who has applied for admission has been denied because of inability to pay.

At its September meeting, the Board discussed its hospital inspection program, which was expanded from six to thirteen statewide districts, and has been very successful in meeting its goal of inspecting at least 10% of the veterinary hospitals in the state this year (see



CRLR Vol. 8, No. 3 (Summer 1988) pp. 82-83 for background information). The program is charged with inspecting veterinary facilities to ensure compliance with state laws, regulations, and BEVM standards. The inspection process also includes maintaining inspection records, filing reports, issuing violation notices, and assisting BEVM in hearings and prosecutions. Board member Jean Guyer stated that the program has been very well received.

#### FUTURE MEETINGS:

January 10-11 in San Jose.

### BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

*Executive Officer: Billie Haynes (916) 445-0793*

This agency regulates two professions: vocational nurses and psychiatric technicians. Its general purpose is to administer and enforce the provisions of Chapters 6.5 and 10, Division 2, of the Business and Professions Code. A licensed practitioner is referred to as either an "LVN" or a "psych tech."

The Board consists of five public members, three LVNs, two psych techs, and one LVN with an administrative or teaching background. At least one of the Board's LVNs must have had at least three years' experience working in skilled nursing facilities.

The Board's authority vests under the Department of Consumer Affairs as an arm of the executive branch. It licenses prospective practitioners, conducts and sets standards for licensing examinations, and has the authority to grant adjudicatory hearings. Certain provisions allow the Board to revoke or reinstate licenses.

The Board currently licenses approximately 68,000 LVNs and 14,000 psychiatric technicians.

#### MAJOR PROJECTS:

*Computer Aided Testing.* The Board is currently working with agencies throughout the state in order to implement a computer testing system for licensing psychiatric technicians. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 80 for background information.) The Board anticipates that six computers will be available statewide for licensing examinations and the scheduled date of implementation is set for September 1989.

To provide information on the Psychiatric Technician Computer Administered

Testing Project, the Board held two orientation sessions in September and October for psychiatric technician directors, educators, and mental health and developmentally disabled representatives and students.

#### LEGISLATION:

*SB 645 (Royce)* authorizes BMQA's Division of Allied Health Professions to adopt and administer regulations establishing standards for additional technical supportive services which may be performed by medical assistants. This bill also requires the Division to request recommendations concerning these standards from other agencies, including the Board. This bill was signed by the Governor (Chapter 666, Statutes of 1988).

*SB 1552 (Kopp)* requires healing arts boards regulating dentists, physicians and surgeons, registered nurses, marriage, family and child counselors, and clinical social workers to consider including training regarding the characteristics and methods of assessment and treatment of AIDS in continuing education requirements. This bill was signed by the Governor on September 22 (Chapter 1213, Statutes of 1988).

*SB 1966 (Davis)* allows the Board to require continuing education for psychiatric technicians. This bill was signed by the Governor on September 20 (Chapter 1078, Statutes of 1988).

*SB 2755 (Royce)* authorizes the Board of Registered Nursing to appoint a special advisory committee to study the shortage of registered nurses in California. This special advisory committee is required to report to the legislature and the BRN on its recommendations and solutions. This bill was signed by

the Governor on September 26 (Chapter 1421, Statutes of 1988).

*AB 4401 (Filante)*, as amended on August 1, provides that a law prohibiting the Department of Health Services from requiring the use of an RN for the performance of any service which may lawfully be performed by an LVN will be repealed on January 1, 1994. The bill also requires a skilled nursing or intermediate care facility to provide an RN for consultational purposes during the hours in which an LVN is used. This bill was signed by the Governor (Chapter 786, Statutes of 1988).

#### RECENT MEETINGS:

At its July 15 meeting, the Board sent out a reminder to all interested parties that a special Board meeting was scheduled for November 2-4 in Los Angeles. The purpose of this meeting was to allow the advisory committees from the Task Force on the Future Roles of the Licensed Vocational Nurse and Psychiatric Technician to make recommendations pursuant to the public hearings held in March, April, and May of this year. (For background information, see CRLR Vol. 8, No. 3 (Summer 1988) p. 83; Vol. 8, No. 1 (Winter 1988) p. 75; Vol. 7, No. 3 (Summer 1987) p. 93; and Vol. 6, No. 4 (Fall 1986) pp. 56-57.) The Board was expected to make final decisions regarding all Task Force recommendations at its regularly scheduled November 16 meeting.

#### FUTURE MEETINGS:

January 13 in Palm Springs.

March 2-3 in Los Angeles.

May 12 in San Francisco (tentative).



## BUSINESS, TRANSPORTATION AND HOUSING AGENCY

### DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

*Director: Jay Stroh (916) 445-3221*

The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department. The Alcoholic Beverage Control Act vests the Department with the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages

within the state. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC issues liquor licenses and investigates violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in the liquor industry trade