



at its then current value. The bill would establish a rebuttable presumption that a facility has made reasonable efforts to safeguard patient property and exempt it from citation or deficiency by the Department of Social Services for violation of this bill if all the various prescribed conditions have been met by the facility. This bill is pending in the Assembly Committee on Aging and Long-Term Care.

AB 2383 (Connelly) died in committee. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 61 for background information on this bill.)

RECENT MEETINGS:

At BENHA's February 9 meeting in Los Angeles, the Board heard public comment from Barbara Heimann of Country Villa Services Corporation in Culver City regarding disciplinary action. Heimann suggested that the current disciplinary structure discourages the best nursing home administrators from accepting employment in troubled facilities for fear of being subject to discipline for situations beyond their control. Citing the public's negative perception of nursing home administrators, Heimann also suggested that the Board consider a name change.

The Education Committee discussed the results of a study conducted by the Ohio Board of Examiners of Nursing Home Administrators (OBENHA), in which BENHA participated. The objective of the study was to determine which states have universities that offer a bachelor's or master's degree program in long-term care administration. According to the study, California has no relevant degree programs and no system to approve university programs in long-term care administration. OBENHA hoped that the study would prove to federal legislators that the states are working toward improving the credentials of nursing home administrators across the country.

The National Association of Boards of Examiners for Nursing Home Administrators recently supported an amendment to H.R. 2270 (Waxman), which is pending in Congress. A provision in H.R. 2270 which would repeal the requirement that states license nursing home administrators has been deleted. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 62 for details on H.R. 2270.)

Results of the licensing examinations administered by BENHA on January 21 show a 36% failure rate for the state exam and a 49% failure rate for the national exam. These percentages are

similar to past exam passage rates.

FUTURE MEETINGS:

To be announced.

BOARD OF OPTOMETRY

Interim 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.

MAJOR PROJECTS:

Regulatory Changes. On February 16, the Board released technical, non-substantive changes to proposed regulations which were the subject of a public hearing on October 29, 1987. The Board issued a fifteen-day notice regarding the changes; the comment period ended on March 2.

The Board adopted section 1526, chapter 15, Title 16 of the California Code of Regulations. If approved by the Office of Administrative Law (OAL), section 1526 would require CPR certification as a condition of licensure and license renewal. The February 16 changes to the proposed section add a provision allowing the Board to grant a ninety-day "good cause" extension of time in which to comply with the CPR requirement for renewal applicants.

Section 1531 describes the Board's examination, and provides that the exam shall include questions on California law and regulations governing the practice of optometry. Under the February 16 changes, the exam will consist of a single section for which a single exam grade will be given.

The Board also approved minor changes to section 1532, which provides that an applicant must pass the exam before being registered by the Board; and section 1533, which permits applicants who have failed the exam to inspect the papers he/she wrote in taking the exam, under specified conditions. Amended section 1535 requires successful completion of the National Board

Examination as a condition of eligibility to take the Board's exam.

New section 1536 establishes a program of mandatory continuing education (CE) as a condition of license renewal; the CE requirements would become effective January 1, 1989. Pursuant to the amendments published on February 16, each licensee must complete twenty hours of Board-approved, formal optometric CE coursework within the year immediately preceding the renewal deadline. Up to one-half of the required twenty hours may be accomplished through specified alternative methods. Section 1536 describes the types of courses which the Board may approve; sets forth approved methods of certifying attendance; and authorizes exemptions from the CE requirement in specified cases.

Finally, section 1565 requires that prescriptions for spectacles and contact lenses written by an optometrist include the name, address, telephone number, and license number of the issuing optometrist; his/her signature; the issue date and expiration date; and the patient's name.

This regulatory package was scheduled for submission to OAL by the end of March.

At its March 3 meeting, the Board reconsidered its previous approval of proposed section 1526, which would require current certification of CPR training for initial licensure and license renewal. Some Board members cited possible health risks and fear of increased liability for optometrists. Board member Dr. Samuel Jerian voiced his opposition to the proposed regulation, stating that CPR does not enhance the treatment of eyes. He said requirements unrelated to optometry should not be mandated because of some potential benefit to the public. However, Board member Dr. Thomas Nagy stated that on occasion stressful situations do arise in optometric offices as a result of the practice of optometry. Board President Dr. Lawrence Thal expressed his view that as a board charged with the responsibility to protect the best interests of the consumer, the Board of Optometry should approve the regulation.

After a lengthy discussion, the Board reiterated its approval of the proposed regulation.

Contemplated Regulations. Another package of regulatory changes to chapter 15, Title 16 of the CCR, is being prepared by Board staff. Among the proposals anticipated are regulations concerning spectacle lens and contact



lens prescriptions; an examination appeals procedure; and a requirement that optometric patients be informed by their optometrist of all alternatives to the treatment recommended by the optometrist. The Board is aiming for a summer hearing date for the proposed changes.

Proposed Repeal of Regulations. In January, the Board requested that the OAL repeal sections 1541 and 1542 of chapter 15, Title 16 of the CCR. The Board seeks the repeals pursuant to section 100, Title 1 of the CCR, which allows for the elimination of regulations for which the statutory authority has been repealed. According to OAL, all that is required is that the Board send a letter to OAL requesting that the sections be repealed. The request must be approved by OAL. The two sections which the Board is attempting to repeal concern optometric corporations. Section 1541 is a definitional section, and section 1542 states that the laws or rules relating to optometric corporations do not impair other laws or rules relating to the practice of optometry. At this writing, no response has been received from OAL.

LEGISLATION:

AB 32 (Bane), which would enact as state law several federal trade regulations which prohibit optometrists from engaging in certain acts in connection with the performance of eye examinations, has passed the Assembly and remains in the Senate Committee on Business and Professions. The Board opposes the bill in its current form. The Board voted to support the bill if it is modified to reflect the authority of the Board to enforce provisions of federal law in general. Assemblymember Bane intends to pursue this bill. (For more information, see CRLR Vol. 7, No. 2 (Spring 1987) p. 63.)

AB 573 (Bates), which would require the Board of Optometry to hold its licensure examination at least twice per year, remains on the Senate floor in the inactive file. (For more information, see CRLR Vol. 8, No. 1 (Winter 1988) p. 68.)

AB 3549 (Jones) would allow the Board of Optometry to recover its costs from the respondent when the Board prevails in an administrative disciplinary action. Currently, the Board may recover costs only in successful criminal actions. Both the Board and the California Optometric Association (COA) support this bill. The bill was introduced on February 17, and was scheduled for hearing in the Assembly Health Committee on March 22.

AB 3551 (Jones) would allow a person licensed to practice optometry in another state to be registered as a licensed optometrist in California by reciprocity, under criteria specified in regulations adopted by the Board. This measure was introduced February 17 and is pending in the Assembly Health Committee. The Board supports this bill. However, the COA believes the bill is too broad and opposes it. Assemblymember Jones has indicated he will not pursue this bill if there is opposition to it.

AB 3738 (Jones) would attempt to fashion a more specific standard than currently exists for approval of fictitious name permits for optometric practices. Fictitious name permits for optometric practices must be approved by the Board. Section 3125 of the Business and Professions Code currently provides that a fictitious name may not be deceptive or misleading. AB 3738 would require that a fictitious name contain the name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the optometric group. The Board supports this bill, but it is opposed by the COA. Assemblymember Jones has indicated he will not pursue the bill if there is opposition to it. The bill was introduced on February 18 and is pending in the Assembly Health Committee.

LITIGATION:

On March 3, the Board voted to explore the possibility of initiating litigation to challenge the Federal Trade Commission's February 10 approval of a trade regulation popularly known as "Eyeglasses II." (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 67-68 for background information.) Preliminary work to a legal challenge will be performed by counsel from the Attorney General's office. The Board questions whether the FTC may exercise power over the states in this area. Board members acknowledged that litigation would be expensive, but expressed hope that other groups will join the Board in a suit so that costs may be spread out.

RECENT MEETINGS:

The Board met on February 4 and 5 in Sacramento, and on March 3 in San Diego. The March 3 meeting was scheduled to coincide with a meeting of the COA.

Board of Optometry staff member Karen Ollinger was introduced as interim Executive Officer of the Board at the March 3 meeting. Ollinger assumed the post on March 1, following the resigna-

tion of former Executive Officer Michael Abbott. In a letter to the Board, Abbott explained his reasons for resigning. He stated that he did not want to continue to serve "in the climate of defamation and derision created by the antics of a small faction of irresponsible board members," and accused two Board members of engaging in a "disruptive vendetta." Abbott further stated that the Board has "repeatedly declined" entreaties to set program priorities in light of the Board's public purpose of consumer protection.

On March 3, the Board discussed whether to ask the Department of Consumer Affairs (DCA) to sponsor a legislative proposal to allow optometrists to prescribe therapeutic drugs. Proponents of such legislation argued that lower medical costs for consumers would result. Opponents included representatives of the COA, who argued strenuously against any such legislation. COA claimed that the time is not right politically for this type of legislation. It is generally believed that ophthalmologists and others would oppose therapeutics legislation because it would expand the traditional scope of optometric practice. The Board narrowly approved a motion to request that DCA back a therapeutics bill.

However, the Board reversed itself on this issue later in the day. Jay Enoch, Dean of the School of Optometry at UC Berkeley, appeared before the Board near the end of the meeting to request that the Board reconsider its earlier approval of therapeutics legislation. Enoch said he was not speaking on the merits of therapeutic drugs. He claimed that there are individuals who have been attempting to have the optometric school at UC Berkeley closed. Enoch opined that a therapeutics bill would give more ammunition to those attempting to "destroy" the school. The Board responded to Enoch's plea by approving a motion to reconsider its earlier support of therapeutics legislation. The matter was then tabled.

The final draft of a consumer pamphlet was approved by the Board on March 3. The pamphlet includes information such as the basic responsibilities of optometrists; the American Optometric Association's Code of Ethics; guidelines for selecting eye care practitioners; and the consumer's options if dissatisfied with eye care received. The pamphlet will be distributed to consumers upon request and to optometrists. DCA has not yet approved the final draft of the pamphlet.



The Board's Policy Committee is developing recommendations for changes in the structure of the Board of Optometry. The Committee is attempting to draft a list of the duties of Board members and staff, including the Executive Officer. The Committee is also considering a suggestion that Board committees be made two-person committees. By limiting committee membership to two people, the provisions of the Open Meetings Act would not apply to the committees. However, under current structure, the President of the Board is an *ex officio* member of all committees. The question was raised as to whether an *ex officio* member would constitute a third committee member for purposes of the Open Meetings Act. The Committee will present its final recommendations to the Board at a future meeting.

The Board's Examination Committee met in Berkeley on February 24. The Committee recommended that the Board attempt to send examination results to candidates for licensure within four weeks after the exam. The Committee also recommended that more of the examination be computer-graded. The Board unanimously accepted the Examination Committee's recommendations.

FUTURE MEETINGS:

May 25 (location undecided).

BUREAU OF PERSONNEL SERVICES

Chief: Jean Orr
(916) 920-6311

The Bureau of Personnel Services, formerly the Bureau of Employment Agencies, was established within the Department of Consumer Affairs to regulate those businesses which secure employment or engagements for others for a fee. The Bureau regulates both employment agencies and nurses' registries. Those businesses which place applicants in temporary positions or positions which command annual gross salaries in excess of \$25,000 are exempt from Bureau regulation. Under AB 2929 (Chapter 912, Statutes of 1986), employer-retained agencies are also exempt from such oversight. AB 2929 became effective July 1, 1987. The number of licensees regulated by the Bureau decreased as a result, but the major decline in the number of licensees expected in April 1988, which was the renewal date for current license holders. (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.)

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. There are approximately 1,600 licensees.

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:

Pilot Enforcement Program. The Bureau's pilot enforcement program has been declared a success. (For background information, see CRLR Vol. 8, No. 1 (Winter 1988) p. 68 and Vol. 7, No. 4 (Fall 1987) p. 63.) During fiscal year 1985-86, the Bureau assisted in securing \$29,000 in refunds for consumers; during fiscal year 1986-87 (the first year of the pilot enforcement program), refunds increased to \$59,158. During the first few months of fiscal year 1987-88, \$33,332 in refunds has been collected. Hundreds of consumers have also been referred to the bonds of six agencies which have gone out of business. The Bureau's tracking of complaints, trends, and actual violations is greatly enhanced with the new programming available with the personal computer now used by Bureau staff.

Regulations. On January 8, the Bureau conducted a public hearing regarding proposed changes to its regulations contained in chapter 28, Title 16 of the California Code of Regulations. Sections 2840 and 2841 were amended to require that employment agency advertisements and agency job advertisements contain the agency license name and either its address, telephone number, or license number. Sections 2842 and 2880 were amended to delete language relating to employer-retained agencies, which the Bureau no longer licenses. Section 2893 would be repealed, as the section's statutory authority has been repealed. Sections 2898 and 2898.1 implement the Bureau's citation and fine authority established under SB 2335 (Montoya), 1986 legislation which added section 125.9 to the Department of Consumer Affairs' gen-

eral provisions in the Business and Professions Code.

The Bureau subsequently adopted these proposed regulatory changes; at this writing, the rulemaking file is being prepared for submission to the Office of Administrative Law.

LEGISLATION:

AB 4007 (Lancaster) would amend statutes governing several agencies of the Department of Consumer Affairs. Existing law classifies employment agencies into categories depending on the type of business engaged in by a person. This bill would delete the babysitting, domestic, modeling, and farm labor categories, and thus would require persons engaged in those activities to be licensed by the Bureau as a general employment agency. This bill would also delete the current fee for a babysitting business and thus require a person engaged in that business to pay the higher fee for a general license. AB 4007 is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 4145 (Wright) would exclude from the licensing provisions of the Employment Agency Law certain "employment counseling services," if they provide services strictly on an hourly basis, with no financial obligation required of the consumer beyond the hourly fee for services rendered.

AB 4145 would also declare that prepaid employment agencies are against public policy. This bill would provide that it is against the public policy of this state for any person who acts as an employment agency in the capacity of an owner-operator, agent, or employee, to impose any fee on an applicant for employment until the applicant has accepted an offer of employment resulting from an employment referral. It would also provide that it is against public policy for any person who acts as a nurses' registry or personnel service in the capacity of an owner-operator, agent, or employee to impose any fee on a nurse, applicant, jobseeker, or client until the services have been delivered. The bill would delete all "prepaid" provisions from the Employment Agency Law.

AB 4145 is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

RECENT MEETINGS:

At its January 8 meeting, the Board met as a committee due to the lack of a quorum. The minutes of the April 10, 1987 Advisory Board meeting were reviewed but could not be approved. Chief