



MAJOR PROJECTS, *supra*, for background information); therefore a passing score on Section 5 would be required for all reciprocity candidates. The Board would continue to require the oral exam of these candidates as a further check on their knowledge and understanding of California landscape architecture. No fees are charged for the oral examination, and oral exam commissioners are not paid.

RECENT MEETINGS:

At its November 6 meeting in Los Angeles, the Board considered recommendations from the CTU regarding needed changes to the UNE Handbook published by CLARB. The Board assumed that the Handbook's purpose is to assist candidates in preparing for the exam. However, the for-sale Handbook was found to include promotional information about CLARB and technical information on how the UNE sets passing scores. The CTU also found that information on exam preparation, contents, and/or administration is insufficient. The Board concurred in CTU's recommendations and voted to notify CLARB of its suggestions.

The Board also agreed to send a letter to Senator Roberti requesting the replacement of Board member Sue Wells as soon as possible. Wells did not seek reappointment after her term expired.

On December 6 in Palm Springs, the Board approved in concept the separate licensure of irrigation consultants. A formal proposal will be submitted at a future meeting.

The education subcommittee presented an overview of its findings from hearings held in northern and southern California on the experience credit granted toward educational requirements for licensure. A formal report with recommendations will be made at the March Board meeting.

The Board approved sending a representative to accreditation meetings when teams from the American Society of Landscape Architects review university and college departments of landscape architecture which are under the Board's jurisdiction. The Board also approved a guide developed by Executive Officer Heath which will be sent to all oral exam commissioners for use in conducting uniform oral examinations.

FUTURE MEETINGS:

To be announced.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Director: Ken Wagstaff
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BMQA is an administrative agency within the state Department of Consumer Affairs. The Board, which consists of twelve physicians and seven lay persons appointed to four-year terms, is divided into three autonomous divisions: Allied Health, Licensing and Medical Quality.

The purpose of BMQA and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code sections 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues.

The functions of the individual divisions are as follows:

The Division of Allied Health Professions (DAHP) directly regulates five non-physician health occupations and oversees the activities of seven other examining committees which license non-physician certificate holders under the jurisdiction of the Board. The following allied health professionals are subject to the jurisdiction of the Division of Allied Health: acupuncturists, audiologists, drugless practitioners, hearing aid dispensers, lay midwives, medical assistants, physical therapists, physical therapist assistants, physician's assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts and speech pathologists.

The Division of Medical Quality (DMQ) reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcing the disciplinary and criminal provisions of the Medical Practice Act. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, allied health professionals and lay persons appointed to investigate matters assigned by the Division of Medical Quality, hear disciplinary charges against physicians and receive input from consumers and health care providers in the community.

Responsibilities of the Division of Licensing (DOL) include issuing licenses and certificates under the Board's jurisdiction, administering the Board's continuing medical education program, sus-

pending, revoking or limiting licenses upon order of the Division of Medical Quality, approving undergraduate and graduate medical education programs for physicians, and developing and administering physician and surgeon examinations.

BMQA's three divisions meet together approximately four times per year, in Los Angeles, San Diego, San Francisco and Sacramento. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

At its December 1987 meeting, the Board elected new officers and division presidents. Dr. Eugene Ellis was elected Board President, and Dr. J. Alfred Rider was selected Board Vice-President. Dr. John Lungren was chosen DOL president; Dr. Rendel Levonian was selected DMQ president; and Dr. John Tsao was reelected for another term as DAHP president.

MAJOR PROJECTS:

Post-1975 Vietnamese Medical Graduates: Implementation of SB 1358. Under SB 1358 (Royce), BMQA is required to appoint a six-member advisory council consisting of five former University of Saigon Medical School faculty members and one member of the Division of Licensing. (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 53-54 and Vol. 7, No. 2 (Spring 1987) p. 1 for background information.) The council is charged with evaluating the license applications of post-1975 Vietnamese applicants and making recommendations to the DOL regarding the applicants' eligibility for licensure. The Division must act on the council's recommendations within ninety days of receipt, and must accept the recommendations unless it holds a hearing and finds that the recommendations are not based on substantial evidence.

At its December 11 meeting in Los Angeles, BMQA appointed the following individuals to the faculty council-in-exile: Tam Duy Bui, MD; Bao Tien Hoang, MD; Cung Duy Nguyen, MD; Ninh Ngoc Tran, MD; Dai Qui Vu, MD; and DOL member Jerome Unatin, MD.

Credentials Committee Procedures Review. Because of concerns raised at DOL's October meeting over the personal liability of DOL members for Credentials Committee decisions, the DOL instructed Board counsel to prepare recommendations regarding the role and function of the Committee. The Credentials Committee currently consists of four members of the DOL who meet in closed session to review non-routine



"problem" applications; no written procedures exist to guide the actions of the Committee or to educate new DOL members or applicants as to the role of the Committee.

At the December DOL meeting, Department of Consumer Affairs (DCA) counsel Greg Gorges and Deputy Attorney General Ed Hill distributed a list of eight recommendations, including the following:

- The role of the Committee should be limited to "the review and approval of applications for licensure which are not routine and raise a substantial question as to the applicant's qualifications for licensure;"

- Decisions made by the Committee should be final and simply reported to the Division (previously, the Committee chair submitted an abbreviated oral report to the rest of the Division for ratification and approval);

- Only three members of the DOL should be appointed to the Committee, and the DOL president should not be a Committee member;

- Policy decisions, promulgation of regulations, and school disapprovals should be handled by the entire Division.

- When the Committee rejects an application, "it should document and advise the applicant of any specific requirements which are not met in the application, of the statutes or regulations which contain any requirement which is not met in the application, and how the applicant may comply with any requirement which is not met."

A member of the audience suggested that the DOL clarify several other points of confusion, including: (1) the method by which Committee members are appointed; (2) the length of Committee membership terms; (3) the manner in which cases are referred to the Committee (e.g., through the DOL Program Manager and/or at the request of the applicant); and (4) provisions for rehearing by the Committee.

Because several Division members objected to voting on a proposal which had been presented to them for the first time that day, DOL president Dr. Rider appointed Drs. Unatin and Milkie to join him in an ad hoc committee which will review the recommendations and report to the DOL at its March meeting.

Diversion Program. At DMQ's October meeting, Diversion Program Manager Chet Pelton presented his analysis of the proposed inclusion of other allied health professionals, specifically physician's assistants (PAs) and podiatrists, in BMQA's Diversion Program. (See

CRLR Vol. 7, No. 4 (Fall 1987) p. 53 and Vol. 7, No. 3 (Summer 1987) p. 82 for background information.) Just after completion of the report, the Board of Podiatric Medicine received statutory authority to establish its own diversion program and Diversion Evaluation Committee. Thus, PAs were the only allied health profession considered for inclusion in the Board's program at the October meeting.

According to Pelton, the addition of PAs into the existing program could be accomplished with existing staff. The additional workload created because of the participation of all allied health committees could also be managed by implementing some procedural changes which could allow effective monitoring of 300-380 participants without sacrificing public safety. By contracting with local consultants, the Program could actually save staff travel costs.

In a memorandum, BMQA's Executive Director Kenneth Wagstaff also recommended the addition of PAs into the Diversion Program. He proposed a two-year pilot project, and recommended that if the project worked well, the Board should consider the inclusion of other health professionals.

In a legal opinion, DCA counsel Greg Gorges indicated that BMQA could provide diversion services for the allied health committees without additional legislation. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 54.)

Finally, DMQ president Dr. Ellis indicated that the chairpersons of the Diversion Evaluation Committees (DECs) were initially in favor of including PAs.

However, despite this show of support for the inclusion of PAs in the Diversion Program, Dr. Ellis stated that no action should be taken on the matter because of a negative recommendation made by the California Medical Association's (CMA) Diversion Liaison Committee against PA participation in BMQA's Diversion Program.

One problem identified by the CMA Committee is BMQA's purported lack of disciplinary control or authority over PAs. According to the Committee, if a PA is terminated from the program, only PAEC (not DMQ or DAHP) would have the power to discipline the former participant. However, BMQA's Chief Medical Consultant Dr. Ikeda stated that the legal issue of control had been analyzed by DCA legal counsel Gorges and by Foone Louie, BMQA legal counsel. Both attorneys agree that an appropriately worded contract could ensure

control. He also indicated that the DECs do not believe the program would be diluted by the addition of allied health professionals.

DMQ members Ms. Nathanson and Dr. Lucine expressed a need to study the recommendations of Mr. Pelton, Mr. Wagstaff, and Mr. Gorges before taking action. Dr. Ellis, however, stated that no action was necessary.

Ray Dale, Executive Director of the Physician's Assistant Examining Committee (PAEC), requested that DMQ state specific reasons for its refusal to allow PAs access to the Diversion Program. He explained that such accountability is necessary so that the PAEC may seek legislation to authorize its own program. PAEC Chairperson Janice Tramel reiterated Mr. Dale's request that the DMQ take a vote and enumerate its reasons for the vote. Mr. Gorges recommended the Division take a vote for the record or postpone the vote until the December meeting in order to give Division members an opportunity to study the issue further.

Dr. Ellis again indicated that he did not agree a vote was necessary. Nevertheless, the issue reappeared on the December agenda.

At the December meeting, the DMQ formally voted to deny PAs access to the Diversion Program, but offered assistance to the PAEC in establishing its own Diversion Program.

DOL Site Visit Reports. At its December meeting, the DOL accepted a report by its site visit team on Philippine medical schools. AB 1859 requires the DOL to conduct site visits of medical schools and accreditation systems in three countries on three continents for the purpose of developing a program for approving foreign medical schools. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 40 and Vol. 6, No. 2 (Spring 1986) p. 46 for background information.)

After visiting six of the Philippines' 27 medical schools, the site visit team concluded that Philippine medical education is not equivalent to that provided in a U.S. or Canadian medical school. The report identified three deficiencies: (1) there is no reliable accreditation system in place; (2) the preclinical and clinical curricula are seriously unequal to those in approved U.S. or Canadian medical schools; and (3) the third-year core clinical clerkships fail to provide true clinical experience. The report recognizes current reform attempts within the existing accreditation system, and recommends an immediate policy change to require a fifth year of clinical experience.



The DOL also completed a site visit to Mexican medical schools shortly before its December meeting. Although its formal report had not yet been prepared, the site visit team distributed a one-page preliminary draft of its observations, which concluded that "although there may well be exceptions, generally speaking, medical education in Mexico is not equivalent to that obtained in the United States or Canada." Division members, staff, and audience participants engaged in a lengthy discussion of the Mexican accreditation system and the degrees/certificates (e.g., the *acta* and the *titulo*) conferred by the medical schools and the Mexican government, which revealed varying levels of perception and understanding of the Mexican system on the part of the Division members.

Pursuant to AB 1859, BMQA was required to submit a final report on its site visits to the legislature by December 31, 1987.

LITIGATION:

At its October meeting, BMQA voted to join with the California chapter of the American Physical Therapy Association (APTA) and the Physical Therapy Examining Committee in a lawsuit against the Board of Chiropractic Examiners (BCE) and the Office of Administrative Law (OAL), which is currently pending in Sacramento Superior Court. The action, which has been consolidated with a similar matter brought by the CMA, challenges BCE's adoption and OAL's approval of new section 302 of the BCE's regulations, which defines the scope of chiropractic practice. As adopted and approved, section 302 permits chiropractors to treat "soft tissue"; undertake "chiropractic prenatal and postnatal care"; employ ultrasound, thermography and other diagnostic aids; and perform various treatments, including "colonic irrigation."

Prior to the adoption of the new regulations, the Attorney General's office successfully prosecuted a case against a chiropractor on behalf of BMQA. The chiropractor was permanently enjoined from performing colonic irrigations and the case was not appealed. BMQA is concerned with preserving the injunction in that case, and has retained the law firm of Wilke, Fleury, Hoffelt, Gould and Birney as counsel in its new suit.

In the lawsuits, plaintiffs generally allege that OAL abused its discretion in approving the BCE regulation in an unauthorized manner, and that BCE abused its discretion in adopting the regulation because it impermissibly expands the

scope of practice of chiropractors. In the CMA action, the court refused to grant a request for a temporary restraining order to stall the effective date of the new regulation, but did order chiropractors to cease performing colonic irrigations, which have been deemed an invasive procedure in a previous court test.

LEGISLATION:

The following is a status report of bills described in previous issues of the *Reporter*, which are currently pending as two-year bills:

AB 2681 (Bane), as amended August 24, would provide, until January 1, 1989, that an applicant who has completed required academic or clinical instruction but not both, or who has not completed either the required academic or clinical instruction, shall be entitled to participate in postgraduate training if he/she satisfies other specified requirements. AB 2681 is pending in the Senate Business and Professions Committee.

SB 395 (Ayala) would provide that if good cause (as defined) is shown, a disciplinary decision made by the DMQ, a MQRC, or a panel thereof may be reconsidered at any time. The Board opposes this two-year bill, which is pending in the Assembly Health Committee.

SB 1116 (Montoya), a two-year bill which would make sweeping change in the procedures of the DOL, is pending in the Assembly Health Committee.

SB 1653 (Seymour) would require state agencies to consult with respondent or respondent's representatives in scheduling adjudicative hearings.

AB 784 (Tucker), as amended June 18, would delete existing provisions which permit licensure applicants to receive a portion of their required clinical instruction at a hospital which has an approved residency program in family practice. The bill would also authorize the DOL to make an independent investigation and evaluation of the educational qualifications and professional training of applicants for licensure, and to require an applicant to undertake additional education and training in order to meet the standards for licensure.

Future Legislation. As of this writing, BMQA is seeking an author for a bill it intends to sponsor this session to amend section 2089(a) of the Business and Professions Code. Currently, section 2089(a) requires students who have attended more than one medical school to have matriculated in the medical

school awarding the MD degree during the last full academic year of medical education. The proposed change would require applicants to complete their last two academic years at the degree-granting institution. While noting that this proposed requirement may pose a hardship for students who transfer after the third year of medical school for legitimate reasons, the DOL agreed with staff that a full two years is needed to enable the medical school to assess the abilities of candidates for degrees, and that the third- and fourth-year clinical rotations should not be interrupted.

Proposed Federal Legislation. Several bills, including H.R. 3410 (Solarz-NY), S. 1868 (Moynihan-NY), and H.R. 3241 (Bates-CA), have been introduced in Congress to prevent state medical boards from discriminating against foreign medical graduates in the area of physician licensure.

Public Law 99-660. Also known as the "Health Care Quality Improvement Act of 1986," this federal law requires BMQA to report all disciplinary actions to a federal registry on a monthly basis. The national data bank is currently being created and is not yet operational.

In addition to BMQA and state medical boards generally, other entities which must comply with the new law's reporting requirements include insurance companies which pay claims under medical malpractice insurance policies; health care entities such as hospitals, HMOs, and group medical practices with a formal professional review process which suspend or revoke privileges for more than thirty days; and professional societies with a formal peer review process which take adverse actions regarding membership of physicians.

RECENT MEETINGS:

At its October 7-9 meeting in Sacramento, the DOL tabled a discussion regarding the oral examination process. The Division noted the difference in recent failure rates between the San Francisco group (16%) and the Los Angeles group (11%), and suggested that it may be due to different groups of oral exam commissioners. The Division formed a subcommittee to investigate the issue and make recommendations at a future meeting.

Chapter 1379 of the Statutes of 1986 (SB 2335, Montoya) authorizes specified DCA agencies to adopt regulations to implement a system of issuing citations and fines to their licentiates and to others who unlawfully provide services for which a license is required. Pursuant



to the new law, the Board of Podiatric Medicine (BPM) recently submitted proposed citation and fine regulations to the DAHP for ratification.

The BPM regulations place violations into two categories depending on their seriousness, and allow some discretionary decisions to be made by the Executive Officer. The regulations authorize the Executive Officer to carry out the program and permit a licensee to contest a citation.

The Registered Dispensing Opticians Program also presented a draft of its proposed citation and fine regulations, which are based on BPM's proposed regulations.

AB 62 (Bane), which has been chaptered, authorizes the DAHP to collect fees for spectacle lens dispenser registration prior to January 1, 1988, and extends the grandparent clause for approved managers to December 31, 1987. At the October meeting, DAHP announced that it would begin to register spectacle lens dispensers immediately, and expected to receive 1,500 to 2,000 registrations by January 1, 1988.

FUTURE MEETINGS:

March 3-4 in Los Angeles.

June 2-3 in San Francisco.

September 15-16 in Sacramento.

December 1-2 in San Diego.

ACUPUNCTURE EXAMINING COMMITTEE

Executive Officer:

Jonathan Diamond
(916) 924-2642

The Acupuncture Examining Committee was created in July 1982 by the legislature as an autonomous rulemaking body. It had previously been an advisory committee to the Division of Allied Health Professions of the Board of Medical Quality Assurance.

The Committee prepares and administers the licensing exam, sets standards for acupuncture schools, and handles complaints against schools and practitioners. The Committee consists of four public members and seven acupuncturists, five of whom must have at least ten years of acupuncture experience. The others must have two years of acupuncture experience and a physicians and surgeons certificate.

MAJOR PROJECTS:

Computerized Exam Questions. The Blue Print Committee for Exam and Curriculum Standardization reported on

computerization of exam questions at the Committee's October 2 meeting. Questions have been formulated and are being entered into the computer; the new test format is expected to be operational in March or April. (See CRLR Vol. 7, No. 3 (Summer 1987) p. 78 for background information.)

Regulations. Also at the October meeting, the Tutorial and Continuing Education Subcommittee submitted draft amendments to sections 1399.425, 1399.426, and 1399.436, Title 16 of the California Administrative Code. The language was approved for formal proposal, with a public hearing scheduled to be held in conjunction with the Committee's January 16 meeting in San Francisco. If adopted, these amendments would require that western science courses in a tutorial program be obtained in an approved acupuncture school or another post-secondary educational institution which is accredited or approved; that the training supervisor file quarterly progress reports with the Committee; that training programs be allowed to be located in an institution which is accredited by a regional accreditation agency authorized by the U.S. Department of Education; and that training programs located outside California may be authorized, accredited, or approved by an appropriate governmental accrediting authority or regional accrediting agency authorized by the U.S. Department of Education.

The proposed regulations would also add a new Article 8 of Chapter 13.7, regarding continuing education. The proposed rules would establish criteria for the approval of continuing education providers; set a fee for course provider approval; and authorize the Committee to audit compliance with the continuing education requirements.

RECENT MEETINGS:

At its October 2 meeting in Marina del Rey, the Committee reviewed the School Subcommittee report on draft regulations regarding out-of-state school approval. The Examination Subcommittee reported that there will be an increase of herb formula categories on the May-June exam. The Committee also created a task force on exam procedures, chaired by Committee member Joel Edelman.

Also at the October meeting, the Enforcement Subcommittee reported its endorsement of recommendations of the National Commission for the Certification of Acupuncturists regarding clean needle/treatment technique.

FUTURE MEETINGS:

April 30 in San Diego.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer:

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The Board of Medical Quality Assurance's Hearing Aid Dispensers Examining Committee (HADEC) prepares, approves, conducts, and grades examinations of applicants for a hearing aid dispenser's license. The Committee also reviews qualifications of exam applicants. Actual licensing is performed by the Board of Medical Quality Assurance. The Committee is further empowered to hear all disciplinary matters assigned to it by the Board. HADEC has the authority to issue citations and fines to licensees who have engaged in misconduct.

The Committee consists of seven members, including four public members. One public member must be a licensed physician and surgeon specializing in treatment of disorders of the ear and certified by the American Board of Otolaryngology. Another public member must be a licensed audiologist. The other three members are licensed hearing aid dispensers.

MAJOR PROJECTS:

Proposed Statutory Revisions. At its October 2 meeting in Sacramento, HADEC presented the fourth draft of its proposed revisions to Business and Professions Code Chapter 7.5, which includes HADEC's enabling act. (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 55-56.) In addition to modernizing the statutory language, the revisions would legalize the executive position and give HADEC more independence from the Board of Medical Quality Assurance. Proposed changes would also broaden HADEC's licensing authority by allowing HADEC to (1) refuse licenses to applicants who have been disciplined in another state; (2) suspend training when a supervisor violates a regulation; (3) hold a supervisor responsible for acts and omissions of a trainee under his/her supervision; and (4) require a supervisor to report within ten days any proposed change in the supervisor-trainee status.

No action was taken on the legislative proposals at the October meeting.

Continuing Education Program. On advice of counsel, HADEC has proposed an additional change in its continuing



education regulations. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 55.) As previously proposed, subsection (a)(1) of section 1399.141, Title 16 of the California Administrative Code, stated that continuing education courses "shall not include information related to the fitting or selling of hearing aids which is required of an entry level practitioner..." The proposed language now states that continuing education courses "shall include information related to the fitting of hearing aids which is at a level above that required for licensure...." A formal hearing on proposed changes to the continuing education regulations will be held in conjunction with the March 26 Committee hearing.

At its October meeting, HADEC presented its new continuing education monitoring form, which will be used to monitor continuing education providers. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 55 for background information.)

Consumer Outreach. Committee member Molly Wilson reported that HADEC continues to follow the consumer lobbying efforts of the American Association of Retired Persons (AARP), a group interested in issues with which HADEC is also concerned. Wilson further reported on the Redding Group on Hearing Aids, which has indicated an interest in making hearing aid devices available for use in public places such as churches and courthouses.

Wilson also offered the first draft of HADEC's consumer education booklet for committee discussion and suggestion. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 55.) In an effort to save the committee the time and money necessary for preparing its own booklet, a member of the profession suggested that HADEC review the consumer booklet on hearing aids issued by the Hearing Industries Association.

Implementation of Legislation. SB 978 (Rosenthal) became law on January 1. This law authorizes HADEC's monitoring of continuing education programs. It also authorizes the licensing examination to include two new components (including anatomy and physiology of the ear, and pathology of the ear as it relates to hearing aids) and questions about the Hearing Aid Act. Prior law limited the examiners to testing on portions of the Act delineating grounds for license revocation. HADEC has requested a \$19,000 budget augmentation for implementation of the new law.

RECENT MEETINGS:

At its October 2 meeting in Sacra-

mento, HADEC addressed the problems associated with products called "assistive listening devices" (ALDs). Some ALD manufacturers apparently attempt to escape regulation by calling their products something other than "hearing aids." The Committee noted that some so-called ALDs on the market are in fact "wearable instruments" within the Business and Professions Code's definition of "hearing aid," and are thus subject to state regulation regardless of their name. Furthermore, HADEC members observed that the stated objective of the Department of Consumer Affairs is to protect consumers from harm, and the unregulated sale of wearable ALDs presents a danger to the public. HADEC therefore believes it has jurisdiction to regulate the sale of ALDs.

Also at the October meeting, Executive Officer Margaret McNally introduced Teena Arneson as the new Consumer Service Representative for HADEC. Ms. Arneson will report on consumer complaints and enforcement of HADEC regulations at an upcoming meeting.

FUTURE MEETINGS:

March 26 in San Francisco.
June 15 in Sacramento.
August 20 in Irvine.
November 5 in Monterey.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Don Wheeler
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The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 8,600 physical therapists. The Committee is comprised of three public and three physical therapist members.

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapy aides (PTAs), and physical therapists certified to practice electromyography or the more rigorous clinical electroneuro-myography.

The Committee also approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam. There is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

In December, Mary Ann Mayers of Encino joined the Committee as a public member, replacing Kathleen Costanzo. Ms. Mayers is Director of Marketing and Public Relations for Prairie Medical Group in Los Angeles, and was appointed to the Committee by Senator David Roberti.

MAJOR PROJECTS:

Task Force on Non-PT Ownership of PT Facilities. The report on non-PT ownership of PT facilities was presented during the "open forum" portion of PTEC's October 22 meeting. After a lengthy study, the Task Force found that such ownership of PT facilities has no apparent negative impact on industry members or consumers. During a lively discussion which followed the presentation of the report, members of the audience suggested that the Task Force be disbanded. Consequently, at its December 3 meeting, the PTEC voted to de-activate the Task Force until further notice. (For background information, see CRLR Vol. 7, No. 3 (Summer 1987) p. 80 and Vol. 7, No. 2 (Spring 1987) p. 57.)

Credentials Subcommittee Guidelines. At its October meeting, the Committee clarified that the Credentials Subcommittee Guidelines would be a part of a new Procedures Manual for new PTEC board members. The functions and duties of each subcommittee will be summarized in this manual so new members will have a better understanding of the Committee. The Executive Officer submitted a draft of the Procedures Manual at the December 3 meeting. The draft was reviewed and minor additions were made.

Regulations. A hearing scheduled for January 29 in Los Angeles on proposed regulations implementing PTEC's citation and fine authority, as provided under SB 2335 (Montoya). These regulations would authorize the Executive Officer of the Committee to issue citations containing orders of abatement; assess fines for violations of specified provisions of law; and, under specified conditions, grant extensions of time for compliance with an order of abatement.

The Executive Officer would also be authorized to issue citations and orders of abatement against unlicensed persons who perform services for which licensure as a physical therapist is required. The proposed regulations set forth a procedure for the contest of any citation, order of abatement, or fine, including an informal conference with the Executive Officer. At the conclusion of the



informal conference, the Executive Officer would be empowered to affirm, modify, or dismiss the action taken.

LEGISLATION:

SB 64 (Torres), PTEC-opposed legislation which became a two-year bill, is now dead. The measure would have created a state Board of Fitness Instructor Certification. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 56.)

SB 309 (Maddy), which was vetoed by the Governor, will be reintroduced next session. The measure, supported by PTEC, would create a new health facility licensing category entitled "hospice acute inpatient facility." (See CRLR Vol. 7, No. 3 (Summer 1987) p. 80.)

LITIGATION:

At its October 22 meeting, PTEC voted to join in a suit with the Board of Medical Quality Assurance (BMQA) and the California chapter of the American Physical Therapy Association against the Board of Chiropractic Examiners (BCE) and the Office of Administrative Law (OAL). The lawsuit challenges BCE's adoption and OAL's approval of section 302 of the chiropractic regulations. At its December 3 meeting, PTEC was informed that on November 30 its lawsuit was consolidated with a similar action filed by the California Medical Association. A case conference was scheduled for early January.

RECENT MEETINGS:

At PTEC's October meeting, staff was instructed to investigate the criteria used by credential evaluating services, which evaluate the transcripts of foreign-trained PTs. The Credentials Subcommittee recommended this action because of significant variations in the evaluation reports sent to PTEC.

Executive Officer Wheeler reported on his communication with Professional Examination Services (PES) regarding the additional \$100 administrative charge for administration of overseas examinations. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 57.) He stated the fee would be collected by PES and will not be the responsibility of PTEC. Mr. Wheeler added that as of October, twelve applicants residing outside the United States were eligible for examination.

Mr. Wheeler also reported on the Department of Consumer Affairs' automation of BMQA cashing and licensing programs, effective January 1. The Committee hopes these processes will be expedited as a result of automation.

Also at the October meeting, the Committee discussed problems with the

current electroneuromyography (EMG) regulations. Committee concerns include the lack of regulatory language regarding individuals who fail the EMG exam and the absence of a fee for re-examination. At the December meeting, draft amendments to the EMG regulations were accepted. As of this writing, a hearing on the proposed changes has not been scheduled.

At its December meeting, the Committee discussed cutbacks in the budget which are needed to accommodate the cost of the current litigation. (See LITIGATION, *supra*.) PTEC also voted to retain its current officers for 1988.

FUTURE MEETINGS:

March 25 in San Francisco.
June 10 in Sacramento.

PHYSICIAN'S ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
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The legislature established the Physician's Assistant Examining Committee (PAEC) to "establish a framework for development of a new category of health manpower—the physician assistant." Citing public concern over the continuing shortage of primary health care providers and the "geographic maldistribution of health care service," the legislature created the PA license category to "encourage the more effective utilization of the skills of physicians by enabling physicians to delegate health care tasks...."

PAEC certifies individuals as PAs, allowing them to perform certain medical procedures under the physician's supervision, such as drawing blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations and assisting in surgery. PAEC's objective is to ensure the public that the incidents and impact of "unqualified, incompetent, fraudulent, negligent and deceptive licensees of the Committee or others who hold themselves out as PAs [are] reduced."

PAEC's nine members include one member of the Board of Medical Quality Assurance (BMQA), a physician representative of a California medical school, an educator participating in an approved program for the training of PAs, one physician who is an approved supervising physician of PAs and who is not a member of any Division of BMQA, three PAs and two public members.

MAJOR PROJECTS:

Civil Service Job Classification for PAs. On September 21, after two-and-one-half years of challenges and hearings, the City and County of San Francisco Civil Service Commission adopted a job classification which will eventually allow PAs to apply for positions within that system. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 58 and Vol. 6, No. 4 (Fall 1986) p. 52 for background information.) The idea of giving PAs access to positions currently held exclusively by nurse practitioners was strongly opposed by the Board of Registered Nursing, representatives from the University of California at San Francisco School of Nursing, some nurses in the employ of the City and County of San Francisco, some nurse administrators, and the Service Employees International Union (SEIU), which currently represents nurses in San Francisco government positions.

Organizations actively supporting the creation of either a new classification for PAs or a joint classification such as Mid-Level Health Practitioner include the San Francisco Physician Assistant Association, the PAEC, the University of California at Davis NP/PA Program, the Stanford PA Program, and some nurse practitioners already employed by the City and County of San Francisco.

The SEIU plans to challenge the classification decision in superior court.

Diversion Program. At the Committee's November meeting, Executive Officer Ray Dale announced that BMQA's Division of Medical Quality (DMQ) had not yet taken action on the proposed contract terms submitted by the PAEC to establish a voluntary diversion program for PAs through the existing DMQ Diversion Program. The proposed contract and inter-agency agreement were scheduled for action at BMQA's October meeting, and were eventually vetoed by DMQ at its December meeting. (See *supra* agency report on BOARD OF MEDICAL QUALITY ASSURANCE.)

As an alternative to participation in DMQ's Diversion Program, PAEC will consider drafting legislation to establish its own program. The legislation will be modeled after SB 201 (Montoya), which authorizes the Board of Podiatric Medicine to establish its own diversion program.

Interim Approval. Legal counsel Greg Gorges' opinion regarding the interim approval process was presented at the November meeting. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 57 for background information.) The subject of the



opinion was Business and Professions Code section 3517, which authorizes interim approval status to graduates of PA programs who are not yet licensed. This status allows the PA graduate to practice as a PA while awaiting the results of the first licensing examination taken after graduation. Of concern to the Committee was a perceived loophole in section 3517 which would benefit an applicant who would have taken and failed the licensing examination prior to graduating from a PA program and applying for interim approval. Board members feared the interim approval would remain in effect under such circumstances.

Mr. Gorges interpreted the legislative intent of section 3517 to mean that when an applicant working under interim approval fails the licensing exam, interim approval ceases, independent of when the exam was taken.

RECENT MEETINGS:

At its November 13 meeting in San Diego, the Committee reelected Janice Tramel as Chairperson. Robert Bonacci was elected Vice-Chairperson.

The Committee discussed the problem of unlicensed medical school graduates seeking a PA license under Business and Professions Code section 3519(a). This section lists two alternative education requirements for PA licensure, including successful completion of (1) a PA program, or (2) medical school. (A prior legal opinion by legal counsel Greg Gorges interpreted section 3519(a)(2) to require completion of medical school in the United States or Canada.)

However, the medical school alternative does not exist as a practical matter, because section 3519(b) requires passing the examination required under section 3517. The required examination is the National Certifying Examination for Primary Care Physician Assistants, administered by the National Commission on Certifying of Physician Assistants (NCCPA). The NCCPA rules currently only allow persons who have graduated from approved PA programs to sit for the exam.

The Committee discussed eliminating the medical school alternative provided in section 3519(a), but because of the administrative time and expense of seeking legislation, the Committee decided to combine this change with similar housekeeping revisions to be introduced at a later date.

The Committee established several goals and objectives for calendar year 1988, including publication of a news-

letter in the spring; production of a pamphlet describing the PA's role; and better communication with the Board of Registered Nursing.

FUTURE MEETINGS:

March 4 in Sacramento.
July 24 in Los Angeles.
August 26 in Monterey.
October 7 in Sacramento.

BOARD OF PODIATRIC MEDICINE

Executive Officer: Carol Sigmann
(916) 920-6347

The Board of Podiatric Medicine (BPM) of the Board of Medical Quality Assurance (BMQA) regulates the practice of podiatric medicine in California. The Board licenses doctors of podiatric medicine (DPMs), administers examinations, approves colleges of podiatric medicine (including resident and preceptorial training), and enforces professional standards by disciplining its licensees. BPM is also authorized to inspect hospital records pertaining to the practice of podiatric medicine.

The Board consists of four licensed podiatrists and two public members.

MAJOR PROJECTS:

Citation and Fine Regulations. As of this writing, the Office of Administrative Law is reviewing the Board's citation and fine regulations, to be included in Article 8, Chapter 13.9, Title 16 of the California Administrative Code. (For background information, see CRLR Vol. 7, No. 4 (Fall 1987) p. 58.)

Proposed Evaluations Policy. At the September 18 Board meeting, Board member Gumm reported on the annual evaluation of the Executive Officer (EO) and the Chief Podiatric Medical Consultant (CPMC). In the past, the Board's Examinations Committee has attempted to evaluate the EO and the CPMC in three areas, including how they function in their positions, their goals and objectives, and whether they are meeting those goals and objectives.

Dr. Gumm stated that an evaluation form had been completed, but it required a considerable time investment on the part of the EO and the CPMC and was less than adequate. Dr. Gumm recommended that (1) the evaluation responsibility be taken from the Examination Committee; and (2) a form be developed similar to that used by the Contractors State License Board, which would be distributed to each BPM member so

that the entire Board could evaluate the performance of the EO and the CPMC. Dr. Gumm further recommended that the completed forms be forwarded to the BPM Vice-President for compilation of evaluation results.

Review of the Master Operational Plan. Also at the September 18 meeting, BPM President Dr. Green suggested that due to constant changes in BPM members and staff, and to ensure that all such transitions are smooth, a detailed Master Operational Plan is needed. The Board supported the idea and Dr. Green asked the BPM to suggest some innovative ways of solving some of the problems delineated in the operational plan. The Board has taken no further action on the plan as of this writing.

LEGISLATION:

The following is a status update on two-year measures reported in CRLR Vol. 7, No. 4 (Fall 1987) at p. 58:

AB 2176 (Polanco), regarding adoption of emergency regulations regarding services performed by medical assistants, has been dropped by its author.

AB 2422 (Allen), regarding petition rights of individuals whose certificates have been revoked on suspended, and *SB 645 (Royce)*, concerning duties of medical assistants, will be pursued by their respective authors during the 1988 session. No major amendments are planned for either bill, as of this writing.

RECENT MEETINGS:

At the Board's September 18 meeting, Dr. Gumm reported that he and Board Analyst Ramsey-Kurre discussed the feasibility of moving the May BPM examination from San Francisco to Sacramento due to the high cost of test facilities in the Bay area. Dr. Gumm requested that staff evaluate the cost-effectiveness of such a move and make a recommendation at the February BPM meeting.

Also at the September meeting, Board member Chan reported on the purpose of the Continuing Education/Postgraduate Training Committee. Dr. Chan stated that the Committee's purpose is to ensure that podiatrists who are licensed by the BPM have completed the required fifty hours of approved continuing medical education (CME) during each two-year renewal period. Dr. Chan further stated that an additional goal of the Committee would be to establish protocols for certifying CME and postgraduate programs.

At the same meeting, Dr. Howard Marshall of the Los Angeles County Medical Association addressed the BPM



on concerns regarding the status of residency approvals in California. Dr. Marshall asked the Postgraduate Training Committee to propose a resolution to approve the postgraduate program slots at the California College of Podiatric Medicine, Southern Campus, to facilitate issuance of limited licenses to participants in that program. Dr. Marshall further stated that those participants would sign a disclaimer acknowledging that the program's final approval must come from the Council on Podiatric Medical Education (CPME).

After an indepth discussion, the BPM stated that it has no authority to approve residency programs which do not provide for "candidacy status" (residents in such programs may apply for limited licenses after one year), but assured Dr. Marshall that the BPM would assist him in any way possible by calling CPME to see what can be done to expedite the approval of this program.

FUTURE MEETINGS:

To be announced.

PSYCHOLOGY EXAMINING COMMITTEE

Executive Officer: Thomas O'Conner (916) 920-6383

The Psychology Examining Committee (PEC) is the state licensing agency for psychologists. PEC sets standards for education and experience required for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, conducts disciplinary hearings, and suspends and revokes licenses. PEC is composed of eight members, three of whom are public members.

MAJOR PROJECTS:

Domains for Oral Examinations. At its November 7 meeting, the PEC proposed that the seven specialty areas of psychology be reduced to three domains (areas of emphasis) for the purposes of oral examinations. The specialties of clinical, counseling, industrial, social, experimental, developmental, and educational psychology will be covered under the three domains, which include applied theory and research, learning principles, and individual intervention. Law and ethics will be covered in each of the three domains, which would be implemented with the June 1988 oral exams. The PEC proposal is intended to reinforce the idea that the psychologist

license is a generic one, and is also intended to help those taking the exams to better anticipate the various topics to be addressed. Although the PEC approved the concept of the three domains in November, specific details remain to be considered.

Proposed Amendments to Regulations Pertaining to Psychological Assistants and Alternate Supervision. At its November meeting, the PEC further revised proposed language amending sections 1387, 1391.1, 1391.5, 1391.6, 1391.8, and 1391.10 in Title 16 of the California Administrative Code. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 59 for background information and other requirements for alternate supervisors.) Sections 1387 and 1391.5 were further amended to add that licensed psychologists who supervise must have a minimum of three years of post-licensure professional practice and must possess a doctorate degree in psychology, educational psychology, or education with a field of specialization in counseling psychology or educational psychology. The doctorate degree need not qualify for licensure in California.

As amended, proposed section 1391.10 would require that each supervisor submit to the PEC an annual report, which includes the nature of the work performed by the psychological assistant being supervised; evidence of employment, such as an employment contract or letter of agreement; the type, extent, and amount of supervision; and certification that the work performed is within the scope of the assistant's education and training. The PEC is preparing a final statement of the proposed regulations for submission to the Office of Administrative Law for approval.

LEGISLATION:

In the next legislative session, the PEC plans to sponsor a bill to increase its examination fee from \$100 to \$150, effective October 1988. The increase is needed because the Professional Examination Service, which contracts with the American Association of State Psychology Boards to administer the exam, will increase its exam fee from \$90 to \$135 in October 1988. The PEC is looking for an author for the bill.

LITIGATION:

In December, the Second District Court of Appeal held in *Krikorian v. Barry*, No. B024603, that a psychologist who reports instances of child abuse to a child protective agency cannot be sued by the individuals involved in the alleged abuse, even if the report is false or

reckless. According to the Child Abuse Reporting Act (Penal Code section 11165 *et seq.*), child care custodians and medical and non-medical practitioners are required to report instances of child abuse to a child protective agency; failure to report is a misdemeanor. The appellate court upheld the trial court's conclusion that the Act was "intended to provide absolute immunity to professionals for conduct giving rise to the obligation to report, such as the collection of data, or the observation, examination, or treatment of the suspected victim or perpetrator of child abuse, performed in a professional capacity or within the scope of employment, as well as for the act of reporting."

The case concerned a suit by nine students who claimed they had been sexually molested by the owner and other personnel of two Peninsula Montessori Schools. The owner, Claudia Krikorian, cross-complained against, among others, Dr. Helena Barry, the clinical psychologist hired by the parents to counsel their children and investigate their abuse claims. The decision is consistent with a previous appellate court decision in *Storch v. Silverman*, 186 Cal.App.3d 671 (1986), which held that those who are subject to the Act and who report suspected child abuse cases are absolutely immune from lawsuits.

RECENT MEETINGS:

At its November meeting, the PEC held a public hearing on proposed regulations pertaining to child abuse detection training (see CRLR Vol. 7, No. 4 (Fall 1987) p. 59 for background information). At the hearing, the PEC added a provision to proposed section 1387.7, which states that "there shall be no exemptions from completion of the training requirements."

The Committee reopened the public comment period on the proposed regulations until December 4; subsequently adopted the regulations as amended; and, as of this writing, is preparing to file them with the Office of Administrative Law.

FUTURE MEETINGS:

March 18-19 in San Diego.
May 13-14 in Los Angeles.
July 22-23 in San Diego.
November 4-5 in Monterey.



SPEECH PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

*Executive Officer: Carol Richards
(916) 920-6388*

The Board of Medical Quality Assurance's Speech Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech pathologists, 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.

MAJOR PROJECTS:

Renewal Fees. On October 8, SPAEC filed a regulation with the Secretary of State amending section 1399.186 of Title 16, California Administrative Code. The amendment raises the license renewal fee from \$35 to \$60.

Public School Speech Pathology Standards. Committee Chair Phil Reid, MD, continues to monitor the current debates between the American Speech-Language-Hearing Association (ASHA), the California Speech-Language-Hearing Association (CSHA), and the Committee for Teacher Credentialing (CTC) concerning standards for public school speech pathologists who have teaching credentials but are not licensed by SPAEC. The point of contention is whether the public school personnel should be held to the highest standard in the state, which is SPAEC licensure or a master's degree.

As a member of an ad hoc committee addressing the issue, Dr. Reid has compared several California public universities and has found that credential requirements vary by as much as twelve semester units among the schools. If it is found that public school personnel holding only teaching credentials are involved in practices warranting licensure, SPAEC standards are likely to be deemed applicable.

RECENT MEETINGS:

At the October 9 SPAEC meeting in Sacramento, Ms. Teena Arneson, Consumer Service Representative for BMQA's Division of Allied Health Professions, explained to the Committee the process by which consumer complaints are received and handled in her office.

Complaints for all nine allied health committees under BMQA's jurisdiction are received in Ms. Arneson's office. When a full investigation is not necessary, Ms. Arneson contacts the executive officer of the appropriate committee and serves on behalf of the committee as a mediator between the licensee and the complainant. Whether an investigation is required is generally determined by the executive officer and the particular committee or the executive officer and legal counsel. Complaints over which the committees have no jurisdiction are referred by staff to agencies such as the Better Business Bureau, small claims court, and local consumer affairs offices.

FUTURE MEETINGS:

March 11 in San Francisco.

May 13 in southern California.

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 January 1, Ray F. Nikkel became BENHA's new Executive Officer. Nikkel succeeded Hal Tindall, who retired after serving as Executive Officer since April 1979. Nikkel has previously worked as a psychiatric technician, a licensed vocational nurse, a registered nurse, and Department of Health Services (DHS) inspector and administrator.

BENHA's budget increased \$15,000 over last year's allocation. The 1987/88 budget is \$315,000.

MAJOR PROJECTS:

Implementation of AB 1834. The recent passage of AB 1834 (Connelly) (see CRLR Vol. 7, No. 4 (Fall 1987) p. 61) will have a significant impact on BENHA. The requirements of AB 1834 include the following:

- BENHA must report to DHS each time a licensed nursing home administrator is appointed as the administrator of a long-term care facility and each time such an appointment is terminated.

- The Board must take disciplinary action against any nursing home administrator who fails to report his/her appointment or termination.

- The Board must maintain a record of all enforcement actions taken against licensees reported to BENHA by the DHS.

- A determination whether disciplinary action against an administrator is warranted must be made by the Board after receipt of a specified report from the DHS.

- AB 1834 requires that BENHA take disciplinary action against any administrator whose reports indicate grounds for suspension or revocation of a license.

- The Board must continuously review the files of administrators who have received citations and must initiate disciplinary action if an administrator's record shows a pattern of poor performance.

- A list of current administrators who have been placed on probation or who have had their licenses suspended or revoked within the past three years must be maintained and provided to all long-term care facilities and to the DHS every six months. The list should be made available to others upon request.

- A study must be conducted by BENHA on the approval process for continuing education courses and for administrator-in-training programs. The results of the study must be presented to the legislature before December 1, 1988.

- BENHA must develop internal poli-