



# REGULATORY AGENCY ACTION

and regulations, which appear in Title 16 of the California Administrative Code. Proposed changes to section 3116 regarding qualifications of applicants would increase education and administrator-in-training requirements for license applicants and possibly eliminate experience as a substitute for education.

Changes to section 3162 concerning program requirements would add an additional requirement that an approved administrator-in-training program shall include a minimum of twenty hours per week of supervised training and work experience in a nursing home.

As required by Penal Code section 11166, the Board has proposed to change section 3175.5 to include failure to report an incident of known or suspected child abuse as grounds for disciplinary action.

Changes in section 3180 regarding fees would provide implementation and phase-in dates for the fee increases approved last year. (See SB 1566 (Deddeh) in CRLR Vol. 7, No. 1 (Winter 1987) p. 54.)

The Board is currently in the process of drafting the language of these proposed regulations.

## LEGISLATION:

**SB 183 (Mello).** Under the Long-Term Care, Health, Safety and Security Act of 1973, a long-term health care facility is required to notify the state Department of Health Services of any changes in a facility's nursing home administrator or director of nursing services. The Department is authorized to conduct an abbreviated inspection of the facility within 90 days of receipt of this notification. SB 183 would require the Department to conduct this inspection within 90 days of the notification by the facility.

## RECENT MEETINGS:

The Board met on February 17 in San Francisco. An analysis of the Board's financial condition was projected using the current fee levels authorized by section 3180 of Title 16, California Administrative Code. Unless the fee increases authorized by SB 1566 (which was signed by the Governor in September 1986) are implemented by 1988, a large deficit in Board funds will occur in fiscal year 1989/90. Even with the fee increases, the Board may incur some deficit.

An attorney from Oregon and his client, a nursing home administrator, requested that the Board hear their story regarding a disciplinary action filed against the nursing home administrator.

The Board denied the request, outlining the administrative procedures that are followed by the Board. Complaints made to the Board are handled in two ways. If the complaint specifically concerns a nursing home administrator and not the nursing home facility, BENHA will hire an investigator to get the facts and report to the Board. Most of these complaints can be resolved by the BENHA staff unless disciplinary action is warranted. If the Board decides to initiate a disciplinary action, the matter is turned over to the Attorney General's office.

If the complaint speaks mainly to the facility rather than to the nursing home administrator individually, the complaint is referred to the Department of Health Services, which determines whether or not to investigate the complaint. All reports made by the Department of Health Services are forwarded to the Attorney General's office and to BENHA. The Board then determines whether to initiate a disciplinary action against the nursing home administrator of the facility. A disciplinary action is initiated in the majority of cases reported to the Board from the Department of Health Services.

The deputy attorney general assigned to the Board prepares the formal complaint. Prior to a hearing on the complaint before an administrative law judge (ALJ), the accused nursing home administrator may present a proposed stipulation to the deputy attorney general, which is in turn presented to BENHA. The Board may accept the stipulation, reject it, or offer a counterproposal. If the Board rejects the proposed stipulation, or if the nursing home administrator rejects the Board's counterproposal, the next step is an administrative hearing.

At this hearing, the nursing home administrator has a chance to present his/her case and call witnesses. The Board has prepared guidelines for the ALJ to use in determining whether disciplinary action is appropriate and what penalties should be imposed (probation, suspension, or revocation of license). The recommendation of the ALJ is then presented to the Board. The Board may accept the recommendation and/or impose a lighter penalty. However, if the Board is of the opinion that the penalty recommended by the ALJ is not severe enough, it must review a copy of the transcript from the hearing before imposing a stricter penalty.

## FUTURE MEETINGS:

To be announced.

## BOARD OF OPTOMETRY

*Executive Officer: Michael Abbott  
(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. Board officers for 1987 include Samuel Jerian, OD, President; Sutter Kunkel, OD, Vice President; and Thomas Nagy, OD, Secretary.

## RECENT MEETINGS:

*Current Regulations Manual and Directory.* A current issue of *Laws Relating to the Practice of Optometry with Rules and Regulations* is now available through the Board. Since its last publication in 1980, many changes have been made in the regulations. Four of the most significant changes include the following:

-The Board of Optometry may now assess administrative fines against Board licensees acting in violation of the laws pertaining to the practice of optometry.

-Patients and former patients or their representatives have the right to inspect their health record within five days after presenting a written request and payment of reasonable clerical costs. Copies of such records must be supplied upon request within fifteen days.

-An optometrist who knows of or reasonably suspects an instance of child abuse is required to report the suspected instance to a child protective agency by telephone and must file a written report within thirty-six hours.

-Foreign optometric school graduates are now able to sit for the state Board licensing examination after satisfactorily completing necessary prerequisites, which include completion of educational requirements equivalent to those of an accredited optometry school, completion of clinical experience requirements, and passage of all parts of the national written examination.

Current directories containing a list of all California-licensed optometrists, their addresses, license numbers, schools, and years of graduation, are available from the Board for a fee of \$10.



**Enforcement.** The Board has implemented a new enforcement program to more effectively handle complaints filed by the public and by optometrists. In the future, every complaint received by the Board will be acknowledged within ten days of receipt, and upon disposition both the complainant and respondent will be notified. Complaint forms may be obtained from the Board office. The Board is empowered by section 3135 of the Business and Professions Code to issue citations and levy administrative fines for various demonstrated violations. The Board usually issues a warning for first-time violations, followed by citations and/or perhaps fines for non-compliance or repeat violations. In cases of more severe violations, the Board may impose disciplinary sanctions against a licensee, including probation, suspension, or license revocation. As part of its new enforcement program, Board staff have instituted a new program to track, monitor, and report enforcement activity.

In the month of January, forty-five complaints were made by the general public and professionals. Approximately half of these complaints involved allegations of fraud, prescription abuse, unethical business practice, poor product or service quality, and negligence.

**Proposed Regulations.** The following regulations have been approved in concept by the Board, and will be published for notice and comment in the near future.

The Board proposes to adopt section 1526 of Title 16 of the California Administrative Code to require each applicant for a renewal optometry license to submit a copy of a certificate of completion of a CPR course. New applicants would be required to furnish evidence of completion of the course prior to taking the California exam.

Section 1530 would be amended to redefine the word "section" as either the written portion or practical portion of the exam. The Board also proposes to adopt section 1530.2, which would require each applicant to submit satisfactory evidence that he/she attended a minimum of 80% of each of the courses required for graduation in order to be admitted to the licensure exam; and section 1530.3, which outlines the Board's specific criteria for accreditation of institutions which provide an optometry education. The criteria would be similar to those used by the American Optometric Association.

Amended section 1531 would add a new topic entitled "California Law and

Regulations Governing the Practice of Optometry" to the practical section of the California exam; amended section 1533 would allow a candidate who has failed the exam to review his/her examination papers; and amended section 1535 would require a candidate to successfully complete the national board exam, including the pharmacy portion, prior to taking practical section of the California exam.

The Board further proposes to adopt Article 6, Chapter 5 to establish a program of mandatory continuing education as a condition of license renewal.

Existing section 1547 would be repealed, and a new section 1547 would increase the minimum liability insurance coverage for corporations which employ optometrists. The current amount is \$45,000 per claim, with an aggregate maximum of \$450,000. The new minimum amounts would be \$100,000 per claim times the number of optometrists employed by the corporation, with an aggregate maximum of \$300,000. The regulation would also permit alternatives to liability insurance in the forms of trusts, certificates of deposit, bonds, or insurance pools.

The Board also proposes to adopt section 1565 to require that each prescription for spectacles and contact lenses contain the name, address, and telephone number of the issuing optometrist, as well as his/her signature, the issue date and expiration date of the prescription, the patient's name and address, the elements of refraction, the optometrist's license number, and specific directions or requirements.

#### LEGISLATION:

**AB 573 (Bates)** would amend sections 3052 and 3152 of the Business and Professions Code to require the Board to offer the state examination for licensure at least twice per year. The test is currently offered only once per year. The bill would also increase the fee for license applicants to \$100. In addition, several new fees would be imposed for registration renewal, branch office license renewal, restoration of certification after suspension, and issuance of certification after change of name.

The Board would also be required to update and streamline its examination process in accordance with the guidelines recommended by the Department of Consumer Affairs in its 1982 internal audit report, including acquisition of a computer system for recording and reporting examination data and grades.

**AB 32 (Bane)** would add Chapter 7.1 (commencing with section 3180) to Division 2 of the Business and Professions Code, and would enact existing federal regulations which prohibit a refractionist, as defined, from engaging in certain acts in connection with the performance of eye examinations. These provisions would be applicable to optometrists, physicians, and surgeons licensed in California who perform eye examinations and write prescriptions for contact lenses and spectacle lenses.

The bill would require the delivery of any spectacle prescription written for a patient after an eye examination, and would prohibit any requirements that a person agree to purchase contact or spectacle lenses from the licensee as a condition to performing an eye examination. The bill would also prohibit the charging of any fee, in addition to the examination fee, as a condition to releasing the prescription to the patient. The licensee may charge an additional fee for verifying the accuracy of contact or spectacle lenses dispensed by another licensee.

AB 32 would further prohibit the optometrist or physician from placing on the prescription, or requiring the patient to sign, or delivering to the patient, a form or notice waiving or disclaiming the liability or responsibility of the licensee for the accuracy of the eye examination or the accuracy of the contact or spectacle lenses or services dispensed by another licensee.

At a recent meeting, the Board voted to disapprove AB 32.

**AB 470 (Calderon)** would require all advertising by optometrist to contain his/her license number. A violation of this requirement would constitute a crime.

#### RECENT MEETINGS:

Two meetings of the full Board were held in January 1987. Among other topics, the Board discussed the need to draw up regulations regarding an alternative pathway to licensure for those candidates who received their education in an unaccredited program, such as the foreign graduate population. Lawrence Thal, OD, enunciated the necessary requirements for licensure—the candidate's credentials must be evaluated for equivalency to the education received at an accredited institution, and a determination made as to whether additional training is required; the applicant must pass the national board examination and then the California examination.



Proposed regulatory action in this area will be discussed at future meetings.

A consumer pamphlet has been prepared as a joint project by the Board and the California Optometric Association. However, the Board currently lacks funding for printing and public distribution of the pamphlet.

#### FUTURE MEETINGS:

To be announced.

### 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.

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 2,100 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. There are currently three vacancies on the Advisory Board: two industry positions and one public member position.

#### MAJOR PROJECTS:

*Impacts of AB 2929.* Due to the deregulation of employer-retained agencies pursuant to AB 2929 (see CRLR Vol. 7, No. 1 (Winter 1987) p. 56), the number of Bureau licensees may be significantly reduced.

Bureau staff and selected Advisory Board members plan to meet with Marie Shibuya-Snell, Director of the Department of Consumer Affairs, to discuss the future of the Bureau. The Department recently sent industry members information on AB 2929 and also

included a three-page survey. The survey results indicate that the industry wants the Bureau to stay in existence.

#### LEGISLATION:

*AB 2733 (Bane)*, a bill clarifying which employers are required to pay for their employees' unemployment insurance, has been chaptered (Chapter 793, statutes of 1986). Following review by legal counsel Don Chang, the Bureau plans to inform nurses' registries and babysitting and domestic agencies as to how this legislation affects them.

#### RECENT MEETINGS:

The Advisory Board met on January 9 in Los Angeles, with discussion focusing on the Board's purpose. Members commented that they would like more interaction with Bureau staff in the form of written recommendations.

There was also some discussion at the January 9 meeting as to whether domestics should be deregulated. A subcommittee was appointed to look into the matter of deregulation of employer-retained domestics and will report back at the next Advisory Board meeting.

#### FUTURE MEETINGS:

To be announced.

### BOARD OF PHARMACY

Executive Officer: Lorie G. Rice  
(916) 445-5014

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

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

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

#### MAJOR PROJECTS:

*Handbook.* A new handbook of current Pharmacy Laws and Regulations became available in March 1987. The Board will also publish a newsletter discussing, among other topics, the law regarding the rescheduling of anabolic steroids as controlled substances.

*Mail Order Prescriptions.* The Board has been investigating the mail-order prescription business, which is not presently allowed in California. The Board has been studying other states in which the business is permitted, particularly with respect to deaths, injuries, or other complaints from consumers resulting from mail order prescriptions. The Board has also communicated with the Federal Trade Commission (FTC) for information on problems in other states. An FTC representative is scheduled to appear at a future meeting to update the Board on an ongoing FTC study of the mail order prescription business. The Little Hoover Commission is also studying this matter.

After receiving and evaluating information from the FTC and the Little Hoover Commission, the Board will examine its regulations and determine whether changes or additions to its regulatory authority are needed. The Board will also evaluate various pieces of proposed legislation dealing with mail order prescriptions.

*Regulations.* Section 1769.1 of Title 16 of the California Administrative Code, which addresses the standards for reinstatement of licensees, was disapproved by the Office of Administrative Law (OAL). Rather than resubmit the regulations to OAL, the Board has decided to publish the standards as guidelines and distribute them to those seeking reinstatement.

Section 1781.5 of Title 16 dealing with hearings for exemptees was also recently disapproved by OAL, and will be resubmitted with corrections. The section would permit the Board to issue an exemption certificate to a manufacturer or wholesaler which employs an individual who has passed a written examination given by the Board and is a pharmacist licensed in a state other than California, or has at least two years of applicable experience in the manufacture, wholesale, or distribution of dangerous drugs.

Finally, the Board's continuing education regulations were also disapproved by OAL, and will be resubmitted. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 49.)