

## HEALTH CARE REGULATORY AGENCIES

to other budget line items involving public education. DOF approved this request, which will take effect July 1, 2001.

At BOP's November 4, 2000 meeting, O'Connor revealed that he had met with officials at DCA to discuss BOP's existing policy to issue a press release on every disciplinary action. O'Connor voiced his opinion that not all disciplinary actions are sufficiently newsworthy to warrant a press release, and he expressed concern that the media and public may perceive the Board's policy to be a wasteful utilization of resources, especially since all disciplinary actions taken by the Board are now posted on BOP's Web site and in its newsletter. In response, the Board unanimously voted to amend its press release policy to allow the Executive Officer, in consultation with the Deputy Director of DCA's Consumer Education Division, to determine on a case-by-case basis whether to issue a press release.

On December 6-8, 2000, BOP held its annual strategic planning session in Monterey at the Asilomar Conference Center. At this meeting, BOP adopted its 2001-02 Strategic

Plan in which it reaffirmed its mission statement, vision statement, and strategic goals whose achievement will enable it to fulfill its mission. BOP further identified numerous objectives in each of its major programs (enforcement, licensing/examinations, continuing education, education and outreach, regulation and legislation, and operational efficiency), along with performance indicators which may enable the Board to measure progress toward fulfillment of its objectives. BOP's 2001-02 Strategic Plan is posted on its Web site.

### FUTURE MEETINGS

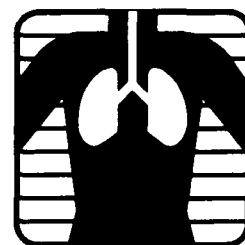
**2001:** May 4-5 in Riverside; August 17-18 in Sacramento; November 2-3 in San Diego.

**2002:** March 8-9 in El Segundo; May 10-11 in Riverside; August 16-17 in San Diego; November 15-16 in Sacramento.

**2003:** February 7-8 in San Francisco; May 9-10 in Los Angeles; August 15-16 in San Diego; November 14-15 in Sacramento.

## Respiratory Care Board

Interim Executive Officer: Stephanie Nunez ♦ (916) 323-9983 ♦ Internet: [www.rcb.ca.gov](http://www.rcb.ca.gov)



The Respiratory Care Board (RCB) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Respiratory Care Practice Act (RCPA), Business and Professions Code section 3700 *et seq.*, and its regulations in Division 13.6, Title 16 of the California Code of Regulations (CCR), RCB licenses and regulates respiratory care practitioners (RCPs). These health care professionals regularly perform critical lifesaving and life support procedures prescribed by physicians that directly affect major organs of the body. RCPs provide direct patient care in the hospital or home care setting; their patients may be suffering from lung cancer, emphysema, asthma, or cystic fibrosis, or may be premature infants whose lungs have not fully developed.

RCB is charged with examining and licensing qualified RCPs, setting standards for the practice of respiratory care in California, inspecting hospitals and other facilities in which respiratory care is delivered, investigating alleged wrongdoing by licensees, and taking appropriate disciplinary action, including license suspension or revocation, to ensure public health and safety.

By law, the nine-member Board is required to consist of four RCPs, four public members, and one physician. The Governor, Senate Rules Committee, and Assembly Speaker each appoint three members. At this writing, two of the three Governor-appointed positions (one RCP and one public member position) have been vacant since May 31, 2000. Fourteen people staff RCB. The Board is financed by licensing fees and receives no allocation from the state general fund.

### MAJOR PROJECTS

#### RCB Negotiating Continued Use of National Licensing Exam

RCB continues to struggle with the issue of whether to continue its use of the national entry-level Certified Respiratory Therapist (CRT) licensing exam prepared and administered by the National Board for Respiratory Care (NBRC), or to develop its own California-specific licensing exam. RCB is dissatisfied with NBRC's 1999 proposal to shift to a computerized format effective January 1, 2000, administer the exam at H&R Block tax preparation locations, and significantly increase the cost of the exam to the Board and its licensure applicants. The Board has also expressed concerns over a 1992 security breach involving NBRC's CRT that was not reported to RCB until 1994.

At RCB's July 1999 meeting, Board members discussed moving away from the national exam and developing a California state licensing exam. Under this alternative, the Board and DCA's Office of Examination Resources (OER) would adapt RCB's existing competency exam into a licensing exam and administer it at state-sanctioned secure sites throughout California. Under this proposal, the cost of administering a state-specific exam would be quite low—probably about \$50 per test, rather than the \$190 exam fee proposed for NBRC's computerized exam. Further, the security of the exam would be preserved because RCB would administer it only at state-sanctioned testing centers throughout California, for which DCA has recently contracted under a master services agree-

## HEALTH CARE REGULATORY AGENCIES

ment on behalf of all of its licensing agencies. However, opponents of the state-specific exam—primarily the California Society for Respiratory Care (CSRC)—argued that use of a California state exam rather than the national exam would hinder RCB licensees' ability to move to other states and become licensed to practice there without reexamination. The Board decided to renew its contract with NBRC (which had expired on June 30, 1999) only through December 31, 1999 to enable licensure applicants to take the remaining two scheduled paper-and-pencil exams. RCB further directed Executive Officer Cate McCoy to look into developing a state-specific exam to be administered at secure sites throughout California, and authorized McCoy and Board President Kim Kruser to continue negotiating with NBRC regarding the Board's concerns about the administration of the computerized version of the exam. [17:1 CRLR 78–79, 16:2 CRLR 70; 16:1 CRLR 88–89]

At its November 1999 meeting, the Board continued its discussion of the examination issue. Board President Kruser stressed that RCB's concerns revolve primarily around NBRC's insistence on administering the exam at H&R Block locations—facilities in which an entirely unrelated business is conducted, and where preservation of examination security cannot be guaranteed. Lynn Morris, DCA Deputy Director for Board Relations, stated the Department's support for termination of the NBRC contract because of NBRC's failure to report the 1992 breach to RCB for two years. Morris reminded Board members that consumer protection is ultimately affected when exam security is violated. Following considerable public comment from RCP students, educational programs, and members of the profession—most of whom demanded continued use of the CRT, Kruser recommended that RCB: (1) designate its existing competency exam as the state's licensing exam and continue to ensure the validity of that exam; (2) administer the exam at state-sanctioned testing sites; and (3) set the examination fee at \$50.

Board member Richard Sheldon, MD, proposed that the Board instead form a task force to discuss alternatives with NBRC. Kruser reminded RCB members that the examination contract with NBRC was set to expire on January 1, 2000 and that RCB must have an approved examination in place. RCB voted to accept computerized CRT scores from January 1, 2000 to June 30, 2000, provided that NBRC submits an affidavit confirming the security of the exam. RCB also voted to create an ad hoc committee consisting of Board members Eugene Mitchell and Dr. Sheldon to attempt to reach an agreement between the Board and NBRC. RCB member J. Michael Thompson, RCP, recused himself from all votes because he is a trustee of NBRC; Board member Randal Clark, RCP, also recused himself because he was CSRC's outgoing president.

NBRC began administering the computerized version of its CRT exam in California on January 1, 2000. At RCB's January 2000 meeting, the ad hoc committee reported that it had reached a tentative agreement with NBRC whereby

NBRC will permit RCB to administer its computerized exam at secure state-sanctioned sites. However, the terms of the contract were still being negotiated; as such, details of the contract were not provided by Board members at the meeting, but Board staff promised to mail a letter explaining the new procedures to directors of all RCP educational programs. At RCB's April 2000 meeting, DCA legal counsel Dan Buntjer reported that the parties were still negotiating the terms of the contract.

At its July 2000 meeting, RCB extended its acceptance of computerized CRT scores from June 30 to December 31, 2000, provided that NBRC again submits an affidavit confirming the security of the exam. Buntjer again reported that contract negotiations with NBRC were ongoing and that progress was being made.

When informed at RCB's November 2000 meeting that the contract had still not been signed, CSRC President Michael Gibbons addressed the Board, stating that CSRC would consider legal action if an examination contract is not signed by December 31, 2000. Gibbons also informed RCB that once the contract is signed, CSRC would ensure that the examination continues to be administered by seeking legislative action, if necessary, and threatened to include other provisions in that legislation that would reduce RCB's application and licensing fees, prevent RCB from issuing probationary licenses for offenses committed more than three years prior to application for licensure, preclude RCB from taking disciplinary action due to criminal convictions unless those offenses are committed in the workplace, and stop RCB from policing RCP educational programs and schools.

Also in November 2000, OER's Dr. Norman Hertz reported that OER had completed its review of the CRT and found the exam valid. Although Dr. Hertz noted that several areas of the exam should be updated or supplemented, the validity of the exam is not affected by these deficiencies. At the same meeting, legal counsel Buntjer informed the Board that contract negotiations were nearing completion for a multi-year contract authorizing RCB to utilize the CRT and administer it in state-sanctioned secure sites. The new contract would expire on June 30, 2003. At this writing, the contract has not yet been signed, and details about the logistics of the examination are scarce due to the ongoing negotiations.

### Provision of Respiratory Care by Unqualified Caregivers

At RCB's July 1999 meeting, Board member Dr. Sheldon led a discussion of the increasingly common occurrence of hospitals and other employers permitting or assigning functions that fall within the definition of respiratory care to non-RCPs, such as registered nurses. RCB formed an interdisciplinary task force to gather documentation of this problem and provide recommendations to the Board. [17:1 CRLR 80]

At RCB's November 1999 meeting, Dr. Sheldon asked that anyone who had experienced or had knowledge of respiratory care functions being performed by nonqualified

caregivers to submit the information to RCB so that it might be forwarded to the task force. He also said that he and RCB Assistant Executive Officer Christina Molina would meet with the president and executive officer of the Board of Registered Nursing (BRN) to discuss the issue. Executive Officer Cate McCoy suggested that RCB may want to have a public hearing to address consumers' concerns and elicit ideas from the public.

At the Board's January 2000 meeting, Dr. Sheldon reported that the task force requested a meeting with BRN to discuss the issue. At the April 2000 meeting, President Barry Winn, RCP, reported that he and Dr. Sheldon had met with BRN, and that RCB and BRN would work together to address the issue of unqualified caregivers performing respiratory care.

### RCP Administration of Intravenous Medication

In August 2000, the California Nurses Association (CNA) sent a letter to RCB complaining about several recent "scope of practice opinions" issued by RCB in which the Board advised RCPs that administration of intravenous (IV) medications is within the scope of practice of an RCP. CNA reminded RCB that it had challenged an identical RCB policy in 1988 as "underground rulemaking," and the Office of Administrative Law had ruled in CNA's favor, finding that any such policy implements or makes specific the Respiratory Care Practice Act and, as such, must be adopted pursuant to the rulemaking requirements of the Administrative Procedure Act. [8:4 CRLR 30-31] CNA asked RCB to inform RCPs that they are not authorized to administer IV medication under current law.

On October 25, 2000, CSRC responded to CNA's letter, expressing disappointment "that you would take such an obviously negative course that will cause undo [sic] difficulty in the workplace and create hardships for California consumers in dire situations." CSRC argued that RCPs have been providing IV medication in the course of RCP practice for many years, even prior to the passage of the RCPA. CSRC also contended that IV practice is not specific to California, but is a standard of practice for RCPs across the country. CSRC characterized CNA's contention as "petty turf protection that leads to dissention [sic] at the bedside.... We ask you to drop this matter immediately so that we all can expend our energies on more serious problems facing both of our professions."

At its November 2000 meeting, RCB considered CNA's letter and asked DCA legal counsel Buntjer for his advice. Buntjer stated that RCB's "scope of practice opinions" are intended to respond to issues on a case-by-case basis and are not intended to establish a policy. He advised RCB not to adopt a regulation concerning administration of IV medication; the long-term effect of such an action would be that every scope of practice opinion would be challenged as underground rulemaking. Board President Winn announced that no further action would be taken on CNA's letter.

### Probation Program Receives CLEAR 2000 Program Award

The Council on Licensure, Enforcement and Regulation (CLEAR) is an international association of individuals, agencies, and organizations that regulate professions and occupations. Each year, CLEAR recognizes an outstanding member, investigator, and program. In 2000, CLEAR presented its program award to RCB's Probation Program, which was developed for alcohol- and substance-abusing respiratory care professionals. [16:1 CRLR 89] Under the program, licensees may be issued a probationary license with specific terms and conditions. The Probation Program is responsible for monitoring such licensees to ensure compliance with these conditions. The program conducts random testing that allows the Board to detect relapses and to protect the public. The probation unit was recognized for its innovation, creativity, and vision in developing and effectively administering the program.

### Longtime Executive Officer Resigns

In February 2001, Executive Officer Cate McCoy notified Board members that she was resigning to take a promotional position with the Department of Social Services. McCoy had served as RCB EO for eleven years, and had received a number of awards recognizing her many contributions to consumer protection. [16:2 CRLR 70] McCoy attended her last Board meeting on March 2, 2001.

McCoy's resignation is likely to prompt CSRC to encourage the Board to reevaluate many policies, especially in the area of discipline. Under McCoy's leadership, RCB has taken its enforcement responsibilities very seriously, especially with regard to applicants and licensees who have criminal histories involving alcohol and substance abuse. While other occupational licensing agencies refuse to confront the issue, RCB has taken a strong stance on it and has voted—as Board policy—to issue a probationary license to any applicant or licensee who has one or more driving under the influence (DUI) conviction within 1-3 years, or two or more DUI convictions within a five-year period. [16:2 CRLR 67-69; 16:1 CRLR 85-87] This policy has translated into a high level of enforcement spending (frequently causing the Board to exceed its enforcement budget) and a high level of enforcement activity. CSRC has frequently complained that RCPs are treated differently than are health care professionals licensed by other boards, and has urged the Board to soften its stance on substance abuse and disciplinary activity generally; McCoy's departure is expected to cause CSRC to formalize that demand.

After a closed session at its March 2001 meeting, RCB announced its appointment of Stephanie Nunez, formerly RCB's Probation Program Coordinator and recently promoted to Assistant Executive Officer, as Interim Executive Officer for a 30-day period. Board President Winn announced that the Board's Executive Committee would evaluate the application of Ms. Nunez and any other interested candidate who applies for the EO position prior to March 22, and make a recommendation to the full Board at its April 2001 meeting.

# HEALTH CARE REGULATORY AGENCIES

At its April 2001 meeting, the Board noted that it had received five applications for the executive officer position and voted to extend the application process until May 4, 2001. Stephanie Nunez continues to serve as Interim Executive Officer.

## 2000 LEGISLATION

**AB 2888 (Committee on Consumer Protection, Governmental Efficiency and Economic Development)**, as amended August 22, 2000, is a DCA omnibus bill making minor changes in the laws governing DCA occupational licensing agencies. As introduced in March 2000, this bill would have amended Business and Professions Code section 3735.3 to require RCP training programs to submit official transcripts of an applicant's educational coursework to RCB prior to the applicant's sitting for the license examination, and would have specified that the transcript must list coursework taken, each course grade received, the date of graduation, and the degree conferred. RCB proposed and supported this proposed amendment. However, reportedly based on opposition from CSRC, the amendment to section 3735.3 was deleted from the August 22 version of the bill, which was eventually signed by the Governor on September 18, 2000 (Chapter 568, Statutes of 2000).

## 2001 LEGISLATION

**SB 26 (Figueroa)**. Business and Professions Code section 3750.51 requires RCB to file an accusation against a licensed RCP within three years from the date the Board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first. As amended March 8, 2001, SB 26 would extend this time period if material evidence relevant to the determination of the accusation is unavailable to the Board due to an ongoing criminal investigation. [*A. B&P and A. Health*]

**SB 349 (Committee on Business and Professions)** as amended March 26, 2001, is a DCA omnibus bill containing several "clean-up" legislative changes. With respect to RCB, this bill would amend Business and Professions Code section 3735.3 to specify that an applicant for RCP licensure may not sit for the examination until official transcripts from his/her training programs have been submitted directly by the training program to RCB; the official transcript must record courses taken, grades given, date of graduation, and degree conferred. RCB staff has requested that DCA remove this provision from the bill. [*S. Appr*]

**AB 269 (Correa)**, as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline system of each DCA board (including RCB). Further, the bill would provide that the executive officer of each DCA board shall be appointed by a three-member panel comprised of a representative of the board, the DCA Director, and the Governor's appointments secretary. [*A. B&P*]

## LITIGATION

Criminal charges have finally been filed against former RCP Efrén Saldivar in the "Angel of Death" case in which Saldivar first confessed—and later retracted his confession—that he had hastened the deaths of up to fifty patients at Glendale Adventist Hospital. [*16:2 CRLR 69*] In January 2001, prosecutors charged Saldivar with six counts of murder in the deaths of six patients whose bodies contained evidence of a drug, Pavulon, that stops breathing. The charges included two special allegations—poisoning and multiple murder—which could lead to the death penalty or life without parole if convicted. Saldivar was arraigned on January 11, 2001 in Los Angeles County Superior Court; on February 5, Saldivar entered a plea of not guilty.

## RECENT MEETINGS

On November 19, 1999, Board President Kim Kruser, RCP, congratulated Executive Officer Cate McCoy, who was awarded CLEAR's Membership Achievement Award. Kruser commended McCoy for her continued contributions to the health, safety, and welfare of the public.

Also at its November 1999 meeting, RCB elected Barry Winn, Ed. D., RCP, as President and public member Eugene Mitchell as Vice-President effective January 1, 2000.

At RCB's January 14, 2000 meeting, Executive Officer McCoy reported that RCB had opted to continue to have its disciplinary cases handled by the Health Quality Enforcement Section of the Attorney General's Office rather than transferring its cases to the Attorney General's Licensing section.

On November 17, 2000, RCB reelected Barry Winn, Ed. D., RCP, as Board President and public member Eugene Mitchell as Vice-President.

## FUTURE MEETINGS

**2001:** May 18 in Sacramento; August 10 in Sacramento; November 9 in Los Angeles.

**2002:** February 21–22 in Sacramento; July 18 in San Diego; November 8 in Los Angeles.