Board's disciplinary procedures. While standing by its current procedures, BOP promised to continue the dialogue with the CPA over these issues.

Karen Johnson, BOP's Licensing Exam Coordinator, presented the results of the April 8 administration of the EPPP. One hundred sixty-eight (168) candidates (53%) passed the exam, and 152 (47%) failed. The results of the June oral examination were also released; of the 512 candidates who took the oral exam, 287 (56.05%) passed, and 225 (43.95%) failed. The passing rate for the June oral exam was substantially higher than the 44.3% passing rate for the oral exam administered in January. Ms. Johnson also reviewed the results of a candidate exit questionnaire, which was distributed to oral exam candidates for the first time at the June oral exam. Of 512 candidates taking the exam, 271 responded. The majority of the responses were favorable.

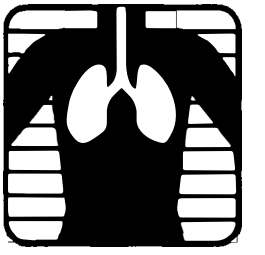
Also at the August meeting, the Board discussed its 1997–98 enforcement statistics. The number of accusations filed is down: 20 were filed in 1997–1998, versus 34 in 1996–1997. The number of cases sent to the Attorney General's Office for prosecution, however, was up: 65 cases were forwarded to the AG in 1997–98, compared to 55 in 1996–1997. Overall, in 1997–98, BOP received 521 complaints, opened 141 investigations, sent 65 cases to the AG, filed 20 accusations, and took a total of 66 disciplinary actions.

At its November 13–14 meeting, the Board discussed a document prepared by staff entitled "Time Line: Legal/Ethical Landmarks: Psychologist/Patient Sexual Misconduct." The document outlines the progress the Board and the legislature have made since 1980 in combating this difficult problem, up to and including the recent prohibition of sexual relations with a former patient within two years after termination of therapy (see LEGISLATION).

Future Meetings

- January 15, 1999 in Burlingame.
- March 5–6, 1999 in Sacramento.
- May 14–15, 1999 in Los Angeles.
- August 13–14, 1999 in San Francisco.
- November 5–6, 1999 in San Diego.

Respiratory Care Board



Executive Officer: Cathleen A. McCoy ♦ (916) 263-2626 ♦ Internet: www.dca.ca.gov/r_r/respcare.htm

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, 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.

Approximately 30% of applicants for RCP licensure have either criminal conviction or substance abuse histories.

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, in order to ensure public health and safety.

The nine-member Board consists of four RCPs, four public members, and one physician; three members are appointed by the Governor, three are appointed by the Senate Rules Committee, and three by the Assembly Speaker. RCB is staffed by 14 people. RCB is financed by licensing fees and receives no allocation from the general fund.

Major Projects

RCB Undergoes Sunset Review

During the fall of 1997, the necessity and performance of RCB were reviewed by the Joint Legislative Sunset Review Committee (JLSRC) and DCA under the "sunset review" process set forth in SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). Under the sunset process, the legislature inserts an expiration date into the enabling act of each DCA regulatory board; prior to that date, the JLSRC must review the need for and performance of the board, and the legislature must pass a bill extending the life of the agency or it ceases to exist. *[15:4 CRLR 32]* As required under the statute, RCB submitted a lengthy report describing its mission, functions, and activities on October 1, and answered questions from JLSRC members at a hearing on November 17, 1997.

In its sunset report, RCB explained the fiscal problems which have caused its enforcement program to essentially shut down midway through the year in both 1995 and 1996; during those years, RCB was required to cease its use of the Attorney General's Office to file accusations and prosecute enforcement cases by February or March. Those fiscal problems started in 1990, when the legislature transferred $785,000 from RCB's reserve fund to the general fund in order to assist in resolving the state's severe financial crisis. *[12:4 CRLR*

1] Since that transfer, RCB has been unable to supplement its AG line item with deficit requests from its reserve fund, because the reserve fund was emptied.

Additionally, RCB's enforcement program has confronted an unusual problem: Approximately 30% of applicants for RCP licensure have either criminal conviction or substance abuse histories. The most common criminal convictions include substance use/abuse, driving under the influence (DUI) of alcohol/drugs, battery, and sexual misconduct. Under Business and Professions Code section 3750.5, these offenses are considered "substantially related" to the qualifications, functions, and duties of a respiratory care practitioner, such that they are grounds for denial of licensure or disciplinary action. Because of this unusual characteristic of its licensee population, RCB is committed to protecting the public with a fairly aggressive detection system: It asks for disclosure of convictions on each license renewal form (under penalty of perjury); and it requests background checks on applicants for licensure from the state Department of Justice, the Federal Bureau of Investigation, and the state Department of Motor Vehicles (because DOJ "rap sheets" do not include DUI convictions).

The Board takes substance abuse very seriously. The profession of respiratory care is a stressful one; further, RCPs have access to and administer many controlled substances as part of their scope of practice. In light of RCB's consumer protection mandate, the Board has taken a strong stand on substance abuse-related misconduct by its licensees and applicants for RCP licensure. It consulted with a psychiatrist specializing in addiction medicine, and voted—as Board policy—to issue a probationary license to any applicant or licensee who has one or more DUI conviction within 1–3 years, or two or more DUI convictions within a five-year period. This policy has translated into a high level of enforcement spending. Because of its stringent review of applications for licensure, RCB files more statements of issues than any other licensing board within DCA, and it spends 84% of its budget on enforcement—more than any other DCA agency.

In its sunset report, RCB made a number of recommendations that it believes should be implemented to enable it to be proactive and fulfill its consumer protection mandate. First, RCB sought a fee increase to enable it to fully administer its enforcement program year-round. RCB also recommended that mandatory reporting requirements be enacted—requiring hospitals and other employers of RCPs to report to RCB when they fire a RCP for medical cause or reason, and requiring RCPs to report other RCPs to the Board when they suspect violations of RCB's laws or regulations. The Board further suggested that it (and its investigators within DCA's Division of Investigation) should be authorized to require immediate drug testing of an RCP upon receipt of a verifiable complaint of practice under the influence; and that registry firms which refer RCPs to hospitals and employers be required to register with the Board (so the Board can ensure that all RCPs a registry is referring are licensed in California). Finally, RCB recommended the establishment of a pilot project authorizing it to temporarily suspend licenses on an immediate basis during certain types of investigations, to prevent additional misconduct and patient injury.

In February 1998, DCA released its report and recommendations as to RCB. Citing the fact that patients who receive treatments from RCPs are in fragile health and the substantial risk of physical harm or death if the RCP does not perform competently, DCA recommended that the state continue to regulate RCPs through the Respiratory Care Board. DCA also recommended a change in the composition of the Board, which consisted (at that time) of four RCPs, three public members, and two physicians. DCA suggested a public member majority, and recommended that the appointing authority for RCB members be conformed to that existing in most other DCA agencies: The Governor should appoint seven RCB members, and the legislature should appoint the remaining two members. The Department agreed that RCB may need a fee increase. However, DCA was not supportive of RCB's requests for establishment of a pilot project authorizing it to temporarily suspend a license during an investigation; registration of RCP registry firms; or mandatory reporting to RCB of the firing of RCPs. DCA did not address RCB's other recommendations.

The JLSRC released its report and recommendations in April 1998. Preliminarily, the JLSRC agreed that the state should continue to regulate RCPs through RCB. The Committee also agreed that the composition of RCB should be revised to remove one physician member and add one public member, but disagreed with DCA on changing the appointing authority of RCB members.

The Joint Committee approved RCB's recommendation for a fee increase, but warned that "a fee increase alone will not address the Board's structural budget problem—expenditures exceeding revenue. Therefore, the Board should consider restructuring and curtailing its enforcement program and reducing discretionary activities. The high costs associated with conducting rigorous background checks, and disciplining applicants and licensees for prior criminal violations, raise the question of whether they should be continued....To balance its budget, the Board needs to strike a balance between proactive enforcement efforts and cost containment." The Joint Committee recommended that RCB be required to report to the legislature on a comprehensive budget plan that will bring spending in line with resources in the near term and over the longer term.

The JLSRC agreed with DCA that, instead of establishing a new mechanism enabling RCB to instantly suspend a license during an investigation, RCB should utilize its existing authority to seek an interim suspension order (ISO) or temporary restraining order (TRO) if it believes a license should be suspended immediately. The Committee also stated it needs more information on RCB's recommendations relative to the registration of registry firms, and mandatory reporting by employers of the firing of RCPs.

SB 1980 (Greene) implements the JLSRC/DCA recommendations relating to RCB's composition, fee increase, and required reporting to the legislature by RCB on its efforts to restructure its enforcement priorities and live within its budget. And RCB successfully sponsored AB 123 (Wildman) to

implements its request for mandatory reporting requirements by employers and RCPs (see LEGISLATION).

Board Revokes License of So-Called "Angel of Death"

On March 13, 1998, an administrative law judge suspended the RCP license of Efren Saldivar, the self-proclaimed "Angel of Death" who allegedly confessed on March 11 to hastening the deaths of 40–50 seriously or terminally ill patients at Glendale Adventist Medical Center since 1989. The interim suspension was issued at the request of the Board within 24 hours of the time the Board learned of the confession. The Board held a formal hearing on its proposal to remove his license on March 31, and revoked his license on May 7. Saldivar did not appear at the hearing or otherwise contest the Board's action.

This bizarre case began in February 1998, when the hospital received an anonymous tip that Saldivar had assisted in the death of a patient that month. The hospital informed the Glendale Police Department, which immediately initiated an investigation into the allegations. Saldivar appeared at the Glendale Police Department on March 11, where—according to police—he provided an audiotaped confession, admitting to killing 40–50 patients by lethal injections, depriving ventilator patients of oxygen, and failing to provide medical care when needed. Saldivar stated that he was angry that terminally ill patients who had given "do not resuscitate" orders were being kept alive.

The case prompted the Board to sponsor AB 123 (Wildman), which now requires hospitals and other employers of RCPs to report to the Board any suspension or termination of an RCP for cause.

Saldivar later recanted his confession, claiming he was on Valium at the time and that he wanted the state to execute him because he lacked the courage to commit suicide. According to RCB, it pursued the license revocation because his alleged confession and subsequent retraction "have shattered the trust [of patients] and caused irreparable harm." The Board found that Saldivar acted beyond the scope of his practice and conspired to hasten the deaths of patients; possessed and administered dangerous and paralyzing drugs; and gave injections and otherwise acted without the orders of physicians.

As the police investigation continued, other disturbing allegations emerged. For example, other RCPs at the hospital may have known of Saldivar's conduct. One RCP reported having seen unauthorized vials of morphine and a paralyzing drug in Saldivar's locker. The hospital itself had initiated an investigation into an alleged mercy-killing by Saldivar in April 1997, but found no evidence of wrongdoing. None of these events were ever reported to the Board. The case prompted the Board to sponsor AB 123 (Wildman), which now requires hospitals and other employers of RCPs to report to the Board any suspension or termination of an RCP for cause; it also requires RCPs who suspect their fellow RCPs to have violated RCB laws or regulations to report them to the Board (see LEGISLATION).

Although the criminal investigation is ongoing, Saldivar has never been charged with any crime. Law enforcement officials may have to exhume the bodies of some of his alleged victims before they have the evidence they need to prove he committed a crime.

Verification of Graduation

At its October 16 meeting, the Board discussed the possibility of seeking legislation to amend section 3735.3 of the Business and Professions Code. Currently, an applicant for an RCP license may not sit for the licensing examination unless the Board receives verification of graduation from the school's program director at least 15 days prior to the date of the examination. Although it is the applicant's responsibility to ensure that the letter is received by the Board, it is customary for the Board to send out reminders to each applicant regarding this requirement. If necessary, the Board sends more than one written reminder; this process takes one staff member 40–60 hours to complete per exam. The Board hopes to amend section 3753.5 to place applicants and directors on notice that only one written reminder will be sent out prior to the examination. The Board agreed to seek legislation to implement this change.

Continuing Education Requirement

On October 16, the Board discussed a possible increase in its continuing education (CE) requirements. The Board currently requires RCPs to complete 15 hours of continuing education requirements every two years. Pursuant to its new authority in AB 123 (Wildman), the Board may increase its CE requirements to 30 hours every two years. RCB discussed the possibility of phasing in enhanced CE requirements over a four-year period so that, by 2002, a licensed RCP would have to complete 30 hours of CE during each two-year renewal cycle. The Board agreed to study the issue further before making any final decision.

Legislation

SB 1980 (Greene), as amended August 21, extends RCB's "sunset" date to July 1, 2003 (see MAJOR PROJECTS). The bill also removes RCB from the jurisdiction of the Medical Board, and changes RCB's composition by reducing the number of physician members from two to one and increasing the number of public members from three to four; further, the bill requires that three of the four RCP members be involved in direct patient care.

SB 1980 also authorizes increases in various fees charged by RCB; among these changes, the application fee ceiling has increased from $200 to $300, with a maximum of $350 for foreign school graduates; the initial license fee was increased to $300, up from $200; and endorsement fees were increased from $50 to $100. The bill requires RCB to fix its license renewal fee so that, together with the estimated amount from revenue, the reserve balance in the Board's contingent fund equals approximately six months' worth of annual authorized expenditures. Finally, new section 3712.5 requires

RCB to report to the legislature on or before October 1, 2000 as to what efforts it has made to rectify its budgetary problems and revise its enforcement program. This bill was supported by the Board and was signed by the Governor on September 29 (Chapter 991, Statutes of 1998).

AB 123 (Wildman), as amended July 23, imposes important new reporting requirements relating to respiratory care therapists. The bill added section 3758 to the Business and Professions Code; this section requires employers of RCPs to report to the Board the suspension or termination for cause of any RCP in their employ. "Suspension or termination for cause" means suspension or termination from employment for any of the following reasons: use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care; unlawful sale of controlled substances or other prescription items; patient neglect, physical harm to a patient, or sexual contact with a patient; falsification of medical records; gross incompetence or negligence; and theft from patients, other employees, or the employer. The failure of an employer to file the report required by section 3758 is punishable by an administrative fine not to exceed $10,000 per violation.

New section 3758.6 requires employers, in addition to the report required by section 3758, to furnish RCB with the name, professional license type and number, and title of the person supervising the licensee who has been suspended or terminated. If the supervisor is an RCP, the Board must investigate whether due care was exercised by that supervisor in accordance with the Respiratory Care Act.

AB 123 also added section 3758.5 to the Business and Professions Code; this provision requires RCPs who have knowledge that another RCP may be in violation of, or has violated, any of the statutes or regulations administered by RCB, to report such information to the Board in writing and cooperate with the Board in furnishing information or assistance as required.

The reporting required by the three new sections described above does not act as a waiver of confidential medical records; and no person shall incur any civil penalty as a result of filing any of the required reports.

AB 123 also authorizes RCB and its agents to inspect or require reports from hospitals and other facilities providing respiratory care concerning the employment of staff providing respiratory care, treatment, or services. This bill authorizes these persons to inspect employment records relevant to an official investigation upon submission of a written request specifying the portion of the records to be inspected.

This bill also authorizes the Board to increase the maximum continuing education requirement for RCPs to 30 hours every two years, and requires licensees to submit proof of completion of continuing education as specified by the Board. Finally, AB 123 specifies that incompetence and a pattern of substandard care are grounds for disciplinary action. The Governor signed AB 123 on September 17 (Chapter 553, Statutes of 1998).

AB 2721 (Miller), as amended August 10, provides that any RCB licensee who engages in, or aids and abets, certain prostitution-related crimes in the work premises is guilty of unprofessional conduct and subject to disciplinary action. AB 2721 also amends section 130 of the Business and Professions Code, specifying that the term of office of RCB members is four years, expiring June 1. The Governor signed AB 2721 on September 29 (Chapter 971, Statutes of 1998).

SB 1663 (O'Connell), as amended August 17, provides that licensees and staff of child day care facilities may administer inhaled medications to a child, if certain requirements are met, including written authorization from the child's parent or legal guardian, compliance on the part of staff with written instructions from the child's physician, and meeting established minimum standards of pediatric first aid training at which the day care licensee, and possibly staff, will receive specialized training on how to administer inhaled medications. This bill was signed by the Governor on September 19 (Chapter 625, Statutes of 1998).

SB 2238 (Committee on Business and Professions), as amended August 26, requires RCB to adopt regulations requiring its licensees to identify themselves to patients as being licensed by the state of California. This bill also requires RCB to submit to the DCA Director, by December 31, 1999, its approach for ensuring evaluation of every licensing exam that it administers. The Governor signed this bill on September 26 (Chapter 879, Statutes of 1998).

Litigation

On May 28, 1998, the Office for Civil Rights (OCR) of the U.S. Department of Health and Human Services dismissed a complaint against RCB filed by a disgruntled licensure applicant referred to as "Mr. D." The applicant contended that RCB's application form improperly asks questions of applicants about prior substance abuse, in violation of the Americans with Disabilities Act (ADA), and that the Board denied him an unrestricted license as a RCP because he had a history of chemical dependency.

Pursuant to its authority under Title II of the ADA, 42 U.S.C. §§ 12131–12134, OCR investigated Mr. D's complaint, and concluded that the questions on the Board's current application form comply with the ADA because they are "narrowly tailored" to inquire about "current" substance use that would "limit or impair the applicant's ability to practice respiratory care safely. They are free of inquiry into an applicant's history. The Board makes additional inquiry into substance use only if the condition impairs or limits the practitioner's ability to practice safely."

Further, OCR agreed that the burden was on Mr. D to prove he was fit for unrestricted licensure. He was given the opportunity to submit evidence of his full and complete rehabilitation to the Board, which he failed to do. OCR gave Mr. D the same opportunity; however, he refused to discuss the Board's position or to provide any evidence refuting RCB's contentions. Mr. D was given 30 days to contest OCR's ruling and to file an appeal; he did not do so. He has since completed his probation and now has an unrestricted license.

Recent Meetings

At its October 16 meeting, RCB announced that the National Board of Respiratory Care unanimously agreed at

its May 16 meeting to convert its nationally standardized paper-and-pencil test, which is currently administered to all initial California RCP candidates, to a computerized test by January 2000, in order to improve examination access and accelerate scoring and test results. Candidates will be able to choose the date on which they would like to be tested at more than 80 computerized testing centers, and will be able to receive their test results immediately as opposed to waiting for several weeks. RCP education programs will receive detailed information regarding the computerized examination while students will receive the necessary information in order to prepare them for computer-administered examinations.

Also on October 16, RCB Executive Officer Cate McCoy announced that, effective October 1, RCB assumed full responsibility for administering its probation monitoring program, which had previously been run for RCB by DCA's Division of Investigation (DofI). Eddie Asencio, who had run RCB's probation monitoring program as a peace officer within DofI for two years, now heads the program at RCB. The program helps to ensure public safety by placing a licensee on probation and monitoring their conduct during the probationary period. Probation of a license may be ordered when there appears to be a need to closely monitor the practice of an RCP to ensure that he/she brings skills up to acceptable levels or makes life changes which alleviate potential harm to the public. Also, as substance abuse is considered to be a disability under the Americans with Disabilities Act, RCB is often obligated to issue a probationary license or be subject to the filing of discrimination charges (see LITIGATION). The probation monitoring program further ensures that those licensees who are placed on probation by the Board are in compliance with all the terms and conditions of their probation. Those licensees who are not in compliance will be reported to the Board for appropriate disciplinary action.

Also in October, Executive Officer McCoy discussed her participation in a hearing sponsored by the Citizen Advocacy Center (CAC), a nonprofit organization which assists public members of health-related occupational licensing boards through training in effective advocacy and providing research, technical support, and networking opportunities to better enable public members to make informed decisions and to participate more effectively and significantly in board activities. CAC recently fashioned a draft model mandatory reporting law that would require the timely reporting to state medical, nursing, and other health professional licensing boards of adverse actions taken by health care organizations or employees in order to better protect public health and safety. On behalf of RCB, Ms. McCoy testified on RCB's new mandatory reporting law, AB 123 (Wildman) (see LEGISLATION), at a public hearing on August 26.

Also at its October 16 meeting, the Board discussed the idea of recreating an inter-board DCA task force to discuss and define scope of practice issues among all boards within DCA, and particularly other health-related boards. RCB Vice-President Barry Winn was asked to develop and initiate efforts to establish and promote communication between boards. RCB also announced its intent to republish its newsletter beginning in 1999. Furthermore, RCB will soon have its own home page on the California Society for Respiratory Care's website at www.csrc.org.

Future Meetings

- January 21–22, 1999 in Sacramento.
- April 9, 1999 in Los Angeles.
- July 16, 1999 in Sacramento.
- November 12, 1999 in San Diego.

Veterinary Medical Board

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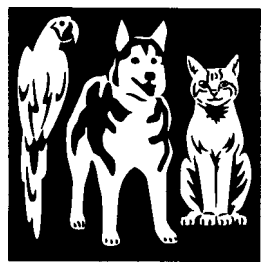

The Veterinary Medical Board (VMB) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Veterinary Medicine Practice Act, Business and Professions Code section 4800 *et seq.*, VMB licenses doctors of veterinary medicine (DVMs) and registered veterinary technicians (RVTs); establishes the scope and standards of practice of veterinary medicine; and investigates complaints and takes disciplinary action against licensees as appropriate. The Board's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR).

VMB also registers veterinary medical, surgical, and dental hospitals and health facilities. All such facilities must be registered with the Board and must comply with minimum standards. A facility may be inspected at any time, and its registration is subject to revocation or suspension if, following a hearing, it is deemed to have fallen short of these standards.

The Board is comprised of seven members—four veterinarians and three public members. The Governor appoints all of the Board's DVM members and one of the public members; the Senate Rules Committee and the Assembly Speaker each appoint one public member. Board members serve four-year terms, and are limited to two consecutive terms.

Pursuant to a new law effective July 1, 1998, the Board maintains the Registered Veterinary Technician Committee (RVTC), an advisory committee on issues pertaining to the practice of veterinary technicians. The Committee consists of five members (three RVTs, one DVM, and one public member) who are appointed to four-year terms by VMB. RVTC is