



under which the pharmacist is to immediately communicate with a patient's physician; provide for a method of periodic review of the functions performed by pharmacists; and describe the method used in developing and approving the procedures. The draft guidelines also include example formats adopted from existing standardized procedures to be used as a guide in developing the procedures for the expanded functions pharmacists may perform.

At the Board's March 29 meeting, the Board discussed the development and implementation of its proposed "Ask Your Pharmacist" public education program which would inform consumers about the benefits of the new oral consultation requirement, among other things. [15:1 CRLR 87; 14:4 CRLR 94] With the help of DCA's public affairs unit, the Board staff developed a logo and the slogan "Be Aware & Take Care: Talk to Your Pharmacist!" Several designs incorporating the logo and slogan for a brochure were submitted to the Board for consideration; the Board agreed on a design and went on to discuss three- and six-month plans for implementing the public education program. The three-month plan involves incorporating the logo on all printed material, developing a Board pamphlet and series of fact sheets, developing new signage for pharmacies, and beginning discussions with drug companies regarding partnering activities with respect to funding and marketing assistance. The plan for the subsequent six months includes printing and distributing the Board pamphlet and fact sheets, sending new signage to pharmacies for posting, developing events for awareness month, and continuing to work with drug companies on funding and marketing. The Board also discussed sources of funding and methods of distribution. It was determined that the cost of printing brochures will be minimal and the brochures could be distributed with consumer complaint forms, sent to legislators, and distributed to consumer groups as well as interested parties in the profession. The Board agreed to proceed with the three- and six-month plans, although it removed from those plans a proposal to issue press releases on disciplinary activity and the development of investigative stories for the media so as to maintain a positive focus for the program.

■ FUTURE MEETINGS

May 24-25 in Sacramento.
July 26-27 in San Diego.
October 25-26 in San Francisco.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Executive Officer:
Harold L. Turner
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The Board of Registration for Professional Engineers and Land Surveyors (PELS) regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act, sections 6700 through 6799 of the Business and Professions Code, and the Professional Land Surveyors Act, sections 8700 through 8806 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR), sections 400 through 471.

The basic functions of the Board are to conduct examinations, issue certificates, registrations, and/or licenses, and appropriately channel complaints against registrants/licensees. The Board is additionally empowered to suspend or revoke registrations/licenses. The Board considers the proposed decisions of administrative law judges who hear appeals of applicants who are denied a registration/license, and those who have had their registration/license suspended or revoked for violations.

Professional engineers are registered through the three Practice Act categories of civil, electrical, and mechanical engineering under section 6730 of the Business and Professions Code. Land surveyors, another Practice Act category, are registered through section 8725 of the Business and Professions Code. The Title Act categories of agricultural, chemical, control system, corrosion, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, and traffic engineering are registered under section 6732 of the Business and Professions Code.

Structural engineering and geotechnical engineering are "title authorities" linked to the civil Practice Act and require an additional examination after qualification as a civil engineer.

The Board consists of thirteen members: seven public members, one licensed land surveyor, four registered Practice Act engineers and one Title Act engineer. The Governor appoints eleven of the members for four-year terms that expire on a staggered basis. Additionally, both the Assembly Speaker and the Senate Rules Committee appoint one public member each.

The Board has established four standing committees and appoints other special committees as needed. The four standing committees are Administration, Enforcement, Examination/Qualifications, and Legislation. Committees function in an advisory capacity unless specifically authorized by the Board to make binding decisions.

PELS is subject to a "sunset" provision. Section 8710 Business and Professions Code, which vests power in the Board, will "become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999 deletes or extends the dates on which it becomes inoperative and is repealed."

■ MAJOR PROJECTS

Professional Engineers Act Rewrite Goes to Public Forum. PELS is currently in the midst of a comprehensive review of the Professional Engineers (PE) Act, its regulations, and the way the state of California licenses and classifies various engineering disciplines; this effort has resulted largely from November 1993 criticism by the Center for Public Interest Law (CPIL) that PELS' engineering statutes and regulations are extremely vague and in need of major restructuring and modernization, and former Board President Rich Johnson's "white paper" entitled *Confronting the Issues of Engineering Discipline Definitions*, in which Johnson agreed with CPIL that the Board's statutes are internally inconsistent and lack clarity. [14:4 CRLR 95; 14:2&3 CRLR 99; 14:1 CRLR 77]

At its September 1994 meeting, PELS announced that it had hired attorney/civil engineer Jimmie Wing to assist in developing legislative language for the rewrite; Wing filled the Board's Staff Counsel III vacancy. [15:1 CRLR 88] According to State Personnel Board specifications, one distinguishing characteristic of the Staff Counsel III position is that the person is "expected to be [an] expert in the most complex area of the law within the departmental legal program"; additionally, the specification states that "[a]pplicants must have active membership in the State Bar before they will be eligible for appointment." State Bar records show that Wing's State Bar license was on inactive status from July 1, 1994 until January 1995; however, in January Wing's status was returned to active status.

At its February 10, March 17, and April 28 meetings, the Board reviewed regulatory schemes used in other states, discussed existing problems with the PE Act, and developed a conceptual outline of the rewrite. Significantly, the Board wants to



implement "generic registration," under which it would grant only one generic PE license instead of the three Practice Act registrations, thirteen Title Act registrations, and two "title authority" registrations currently offered. Generic registration would conform California's licensing system with those in most other states. The Board feels the current system's complexity serves no purpose and only confuses the consumer.

The highlights of PELS' draft PE rewrite are as follows:

- All registrants would be registered generically as PEs, with designations as to areas of practice in which they have been "deemed qualified" by testing, rather than being registered in specific branches of engineering. All registrants would be required to provide engineering services in a competent manner, and their registration would be at risk if they fail to do so.

- Traditional Title Act categories would be eliminated and essentially converted to practice acts because generic PE registration would be required in order to perform prior Title Act work.

- The rewrite of the PE Act would allow applicants to test in any of seventeen areas in which the National Council of Examiners for Engineering and Surveying (NCEES) offers an exam. It would eliminate PELS' current registrations in quality, safety, traffic, and corrosion engineering, because NCEES does not offer exams in these disciplines; and add aeronautical, ceramic, environmental, mining/materials, and structural engineering exams (as NCEES has developed exams in those areas). When an applicant passes any exam, he/she would receive a professional engineering license and would be "deemed qualified" in the area tested, but could practice in any area of engineering. For example, a PE who has tested in agricultural engineering could perform the work of a nuclear engineer. If the Board attempts to discipline that engineer for shoddy nuclear engineering work, he/she would not be "deemed qualified" in nuclear engineering and the burden would shift to the registrant to prove that, through training or experience, he/she was qualified to do nuclear engineering work.

- Although all registered PEs would be allowed to practice engineering in any area in which he/she is competent, it is the duty and obligation of a PE to develop (through education and/or experience) competency in an area prior to independently practicing in that area.

- Rather than defining areas of practice for testing and enforcement purposes in the Business and Professions Code, PELS would rely on NCEES test plans to provide these definitions.

- The PE Act rewrite would eliminate many exemptions in the present Act and broaden the definition of those who need a license to do engineering work. With generic registration, unlicensed people who practice in one of the Title Act categories would need a license to continue working in that area. For example, a fire protection contractor who designs and installs fire systems may have to get a license as a PE, and preferably take the fire protection test, before that person could continue working in that area. Additionally, the new act would require a California PE registrant to sign and stamp all pre-designed engineering components manufactured out-of-state; require registration of independent contractors who do engineering work for the communications industry; and require registration of independent contractors to businesses which qualify for the industry exemption. In essence, the new PE Act requires licensing of anyone who does engineering work except industry and government employees—both longstanding and politically powerful exemptions.

At its March 17 meeting, the Board agreed upon a schedule for a dozen public forums all over the state on the proposed rewrite that will tentatively start on May 8 and run through August 31; the Board noted that this conceptual outline is preliminary and will probably change considerably as information is gathered from the public forums and legislators.

Strategic Planning Update. Responding to criticism levied during a November 1993 oversight hearing conducted by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, and in preparation for its upcoming "sunset" review by the legislature in 1996 [14:4 CRLR 96], PELS is in the process of formulating a "strategic plan" designed to clarify its role, functions, and constituencies. As part of the strategic planning process, PELS recently adopted "mission" and "vision" statements that, respectively, enumerate the present and future goals of the Board. [15:1 CRLR 88; 14:4 CRLR 94; 14:2&3 CRLR 99]

At its January 6 meeting, the Board directed its standing committees to eliminate redundant goals between committees, prioritize remaining goals, and draft a proposed program for implementation of the top five goals. On March 24, the committees presented their results, suggesting proposals such as development of a new information management system which will address the needs of the Board's "three major clients—registrants and licensees, applicants for examinations, and consumers"; development of a deterrent-producing enforcement program; implementation

of computerized testing for some examinations; and defining legislation review responsibilities for staff and committee members. On April 28, PELS' ad hoc strategic planning committee presented a "rough draft" of the overall strategic plan to the Board for comments. The draft included, among other things, sections on the history and background of the Board; PELS' current organization; the strategic planning process; and the objectives and goals of the Board. The Board directed its committees to review the draft and present comments and recommendations at PELS' June 9 meeting.

Board Reconsiders Comity Registration Policy. On January 6, the Board decided to tighten its comity standards by granting comity registration in Practice Act disciplines only to applicants who have passed a Practice Act examination similar to the one administered in California; "comity registration" refers to the Board's issuance of a certificate of registration to practice professional engineering to a person authorized to practice professional engineering under the laws of another state or a foreign country, and the Board's discretion in this area is limited by Business and Professions Code section 6759. Under the Board's January 6 policy, an applicant must show proof of passing a NCEES-produced exam in civil, electrical, or mechanical engineering in order to receive comity registration in that branch. Engineer member Ted Fairfield expressed concern that some comity applicants may make an "end run" around PELS' licensure requirements by going to another state, taking a NCEES examination in any subject, and then applying for California comity registration in one of the Practice Act categories of civil, electrical, or mechanical engineering without having been tested in that subject. [15:1 CRLR 89]

The problem arises when the Practice Act comity applicant cannot show proof of taking a NCEES exam in one of the California Practice Act branches. In the past, many states offered a combined branch NCEES examination that contained problems in chemical, civil, mechanical, and electrical engineering from which the examinee would choose a subset of the available questions to answer; to further complicate matters, some states do not even maintain records on the type of exam an individual took. At its February 10 meeting, PELS' first application of its new policy produced an incongruous result. One comity registration applicant had a master's degree in mechanical engineering, a Ph.D. in mechanical/chemical engineering, passed a combined branch licensing exam in New York in 1972, and has



more than twenty years' of relevant experience. However, because the exam was a combined branch exam, PELS denied the applicant California comity registration as a mechanical engineer and instead approved him as a chemical engineer.

At its March 24 meeting, the Board decided to revise its new policy to make it more discretionary; when an applicant does not appear to qualify for comity under the above criteria, the information will be forwarded to the Practice Act Board member registered in that branch and a public member for recommendations.

Board to Commence Rulemaking on Combined Exam Review and Appeal.

At its March 24 meeting, the Board discussed draft amendments to sections 407, 443, and 444, Title 16 of the CCR, relating to the exam review and question appeal process. The draft changes to section 407 would provide that the fee for an examination appeal is \$98, regardless of the type of examination involved. Section 444 currently provides that within sixty days after the date on which notice of the results of his/her examination was mailed to him/her, an applicant who was unsuccessful in the examination may appeal to PELS for a review/appeal of his/her examination papers. The Board's draft changes to sections 443 and 444 would provide that applicants who are unsuccessful in the examination will be notified by mail of the date and time in which they may attend a review/appeal session; at that session, the applicant would be granted eight hours in which to review and/or write an appeal for an essay-type problem or problems attended during the written examination. Bob Hoerger, a registered land surveyor in attendance at PELS' March 24 meeting, opined to the Board that an applicant cannot possibly anticipate which questions were improperly graded and bring the relevant caselaw and technical references to back up that claim to the combined review/appeal session. As a result, the Board considered revised language that would have allowed a ten-day period after the review/appeal session for an applicant to submit supporting material; however, the Board ultimately rejected this language.

At this writing, PELS is expected to publish formal notice of this proposed rulemaking in late May.

Emergency Regulation Implements Little Brooks Act. On March 17, PELS adopted—on an emergency basis—sections 474, 474.1, 474.2, 474.3, 474.4, and 474.5, Title 16 of the CCR, which implement the Little Brooks Act, Government Code section 4525 *et seq.*; specifically, these regulations define the procedures the Board must follow when soliciting bids

from and awarding contracts to private engineering and land surveying firms.

The emergency arose when the Department of General Services' (DGS) Office of Legal Services refused to approve a contract awarded by PELS to the company that screens applicants for the annual land surveyors' examination. The exam was scheduled for April 7, and PELS' existing contract with the company had expired. Although PELS claimed to have followed the Little Brooks Act and DGS' implementing regulations during the contracting process, Government Code section 4526 requires the Board to adopt regulations to implement the Act. In late March, PELS filed a "finding of emergency" with the Office of Administrative Law (OAL) document to justify the emergency action, which stated that over 700 applications to take the exam had been received but not processed, and urged OAL to approve the emergency regulations so the applications could be processed and the exam administered on April 7. In its "finding of emergency," PELS argued that "[i]f the applications for the April examination are not processed in a timely manner, 700 men and women will be unreasonably restricted from entering their chosen profession. For many of these people, decisions on jobs, promotions and the relocation of families will be put off for over a year if the examination is postponed. These people are faced with serious economic loss."

However, according to a document submitted to OAL by registered land surveyor Bob Hoerger, the exam applications had already been processed by PELS' land surveyor exam consultant in a two-day session on March 9–10 in Moreno Valley. Hoerger's letter stated that PELS member David Slawson and another named source confirmed the information. According to Hoerger, "[f]or a state administrative agency to submit claimed 'facts' which are known to be false in a legislatively-prescribed state document to the legislatively-designated control agency amounts at best to bad faith, and at worst to overt fraud." Hoerger urged OAL to reject the proposed regulations and send a message to PELS to "stick to the truth."

Despite Hoerger's allegations, OAL approved the regulations, which became effective immediately after filing on April 6. On April 28, PELS published formal notice of its intent to adopt the sections on a permanent basis; at this writing, the Board is scheduled to hold a public hearing on the proposed action on July 14.

Update on Other PELS Rulemaking.

The following is a status update on other PELS rulemaking proposals discussed in detail in previous issues of the *Reporter*:

• Definition of Electrical Engineering.

On May 9, OAL rejected PELS' amendments to section 404 and adoption of new section 426.70, Title 16 of the CCR, regarding the practice of electrical engineering; since 1992, PELS has been discussing the adoption of regulatory language to clarify the scope of practice of electrical engineers and to specify what constitutes qualifying experience for registration as an electrical engineer. [15:1 CRLR 89; 14:4 CRLR 96; 14:2&3 CRLR 100–01]

Previously, section 404 defined electrical engineering as that branch of professional engineering which embraces studies or activities relating to the generation, transmission, and utilization of electrical energy, including the design of electrical, electronic, and magnetic circuits and the technical control of their operation and of the design of electrical gear. Among other things, the proposed amendments to section 404 attempted to more specifically define the scope of practice of a licensed electrical engineer. The new definition would have required registration for anyone who designs or develops electrical engineering design products in the following areas: electrical power systems; public lighting systems; and communication and broadcast systems and analog systems, and the associated software or firmware (excluding the development or production of commercial software). Some industry representatives view the inclusion of software and firmware as an expansion of the old definition, and believe it will cost them considerable business to the few registered electrical engineers in the communication and power software field. Proposed new section 426.70 would have provided, among other things, that experience which qualifies an applicant for registration as an electrical engineer is work that conforms with the definition of the term electrical engineering as specified in section 404.

According to OAL, it rejected PELS' proposed changes because they did not comply with the clarity, consistency, or necessity standards contained in Government Code section 11349.1, and because PELS failed to comply with Administrative Procedure Act requirements. At this writing, PELS is revising its proposed changes in light of OAL's comments, and has 120 days from the date of rejection to cure the deficiencies cited by OAL and resubmit the rulemaking file for approval.

• **Delinquent Registrants.** On March 24, the Board adopted a revised version of proposed new section 424.5, Title 16 of the CCR, which would remove some of the discretion the Board wanted when deciding whether to reinstate a delinquent registrant; the changes were required be-



cause of OAL's 1994 rejection of the section for lack of clarity. [15:1 CRLR 89] The revised regulation defines requirements and conditions for renewal, restoration, reinstatement, or reissuance of a delinquent license or registration. Among other things, section 424.5 would require a person seeking reinstatement of an expired license or registration to submit evidence satisfactory to PELS that he/she is qualified in the branch for which he/she applied; successfully complete the specified examination(s); and pay all accrued and unpaid renewal fees. [14:4 CRLR 95; 14:2&3 CRLR 100; 14:1 CRLR 78] At this writing, OAL is reviewing the revised language of section 424.5.

• **Citation and Fine Program.** On March 23, OAL rejected PELS's proposed new sections 472, 472.1, 472.2, 472.3, 472.4, 473, 473.1, 473.2, 473.3, 473.4, and 473.5, Title 16 of the CCR, on grounds they fail to comply with the consistency, clarity, necessity, authority, and reference standards in Government Code section 11349.1. These rules would at long last implement PELS' authority to issue citations, orders of abatement, and fines against unregistered or unlicensed individuals who are performing services for which registration or licensure is required, and against registered or licensed individuals who violate the Professional Engineers Act, the Professional Land Surveyors Act, or PELS' regulations. According to PELS, this program will serve as an enforcement tool to address violations of the Board's enabling acts and regulations that do not merit full-fledged disciplinary action but should not be ignored. After many registrants voiced concerns about the proposed regulatory language, the Board modified section 473 to provide that, before issuing a citation to a registrant or licensee, the Executive Officer must submit the alleged violation for review by at least one registrant or licensee of the Board; upon conclusion of the review, the reviewer will prepare findings of fact and a recommendation, to which the Executive Officer must give "due consideration" in determining whether cause exists to issue a citation. [15:1 CRLR 89-90; 14:4 CRLR 95; 14:2&3 CRLR 100]

On April 12, the Board published revised language of its citation and fine regulations for a 15-day public comment period. The most notable changes delete entirely section 473.2 concerning orders of abatement and corrective orders, and clarify that the registrant or licensee who reviews the Executive Officer's recommendation regarding the issuance of a citation and/or fine must be competent in the branch of professional engineering or land surveying most relevant to the subject

matter of the citation, and must be either a member of the Board's professional staff, a technical advisory committee member, or an expert consultant. At this writing, the Board expects to review the public comments received on the revised language and vote on the changes at its June 9 meeting.

■ LEGISLATION

AB 717 (Ducheny, Hauser). Existing law provides for the establishment and enforcement of state building standards; these provisions include oversight of matters relating to these standards by state and local entities, including cities, counties, and the State Building Standards Commission. As amended May 9, this bill would establish certification, training, and continuing education requirements for construction inspectors, plans examiners, and building officials who are employed by a local agency in a temporary or permanent capacity. The bill would exempt from its training and certification requirements any person currently and continuously employed by a local agency as a construction inspector, plans examiner, or building official for not less than two years prior to the effective date of the bill, until that person obtains new employment, as specified. The bill would provide that it is not intended to prohibit any local agency from prescribing additional criteria for the certification of construction inspectors, plans examiners, or building officials, and set forth other powers and duties of the local agency, including the power of the local agency to impose fees to cover the cost of compliance with the bill's provisions. [A. Appr]

AB 778 (Aguiar). The Professional Engineers Act provides that PELS shall consist of thirteen members, seven of whom are public members not registered under the Act or licensed under the Land Surveyors Act; the Governor is required to appoint five of the public members. As amended May 1, this bill would provide that one of the public members be an active local building official not registered under the Professional Engineers Act or licensed under the Professional Land Surveyors Act, and include that member as one of the public members to be appointed by the Governor. [S. B&P]

AB 1566 (Rainey), as introduced February 24, would define geodetic surveying as within the definition of land surveying.

The Professional Land Surveyors Act specifies the physical characteristics of the map that is the record of a survey. This bill would revise those characteristics, as specified, and make conforming changes. [S. LGov]

SB 495 (Alquist). Existing law provides that "earthquake hazard mitigation technologies" includes technologies that endeavor to reasonably protect buildings and nonstructural components, building contents, and functional capability from earthquake damage, and excludes technologies with detailed code provisions in the 1988 edition of the Model Codes, as defined. Existing law requires the State Architect to adopt regulations for the application of earthquake hazard mitigation technologies for buildings. As introduced February 17, this bill would delete the exclusion of technologies with detailed code provisions in the 1988 edition of the Model Codes, as defined, and would require the State Architect to develop by January 1, 1997, and thereafter to update as needed, a list of new and emerging technologies for earthquake hazard mitigation technologies.

This bill would require any architect, civil engineer, or structural engineer, when hired or employed to provide services relating to the design, development, construction, retrofitting, repair, or renovation of any facility, building, structure, or other improvement to real property, to advise the owner regarding the standards contained in the California Building Standards Code as they relate to earthquake hazards, and regarding available earthquake hazard mitigating technology. The bill would permit an architect, civil engineer, or structural engineer to comply with this requirement by providing the owner with a copy of the list of new and emerging technologies developed by the State Architect pursuant to the bill. [S. H&LU]

SB 914 (Alquist), as amended April 6, would require PELS, the Board of Architectural Examiners, and the Board of Registration for Geologists and Geophysicists to develop, adopt, and enforce regulations on or before July 1, 1996, applicable to the state and local enforcement agencies that regulate building standards and that, pursuant to the bill, have, on staff or under contract, appropriately licensed architects, registered geologists, and registered professional engineers with demonstrated competence to review plans, specifications, reports, or documents for the design and construction of all architectural, engineering, and geological work regulated by building standards.

This bill would also provide that, notwithstanding existing law, every state and local enforcement agency shall have, on staff or under contract, appropriately licensed architects, registered professional geologists, and registered professional engineers with demonstrated competence to review the plans, specifications, reports,



or documents for the design and construction of all architectural, geological, or engineering work related by building standards, prior to agency approval of this work. The bill would also provide that, notwithstanding existing law, all state and local enforcement agencies shall return any incomplete building plans, specifications, reports, or documents, accompanied by a statement to the applicant identifying the part or parts of the plans that are incomplete, and specifying the actions required to be taken by the architect, engineer, geologist, or building designer to complete the plans, specifications, reports, or documents prior to any resubmission. [S. H&LU]

RECENT MEETINGS

At its February 10 meeting in San Diego, PELS unanimously approved new operating procedures that clarify the parliamentary procedures which will be used at Board meetings, define how to conduct public meetings, and enumerate the Board's committees and the procedures they must follow.

At PELS' April 28 meeting in San Francisco, its Administrative Committee suggested that staff compile an "opinion manual" on past Board decisions and resolutions that would provide an easy way to reference past Board actions. The Board is expected to act on this suggestion after the Committee and the Board determine what constitutes a "Board opinion."

FUTURE MEETINGS

June 9 in Sacramento.
July 14 in Los Angeles.
August 25 in San Jose.
November 17 in Sacramento.

BOARD OF REGISTERED NURSING

Executive Officer:
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Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 *et seq.*, the Board of Registered Nursing (BRN) licenses qualified RNs, establishes accreditation requirements for California nursing schools, and reviews nursing school curricula. In addition, BRN certifies nurse-midwives (CNM), nurse practitioners (NP), and nurse anesthetists (CRNA). A major Board responsibility involves taking disciplinary action against licensees. BRN's regulations implementing the Nursing Practice Act are codified

in Division 14, Title 16 of the California Code of Regulations (CCR).

The nine-member Board consists of three public members, three registered nurses actively engaged in patient care, one licensed RN administrator of a nursing service, one nurse educator, and one licensed physician. All serve four-year terms.

The Board is financed by licensing fees, and receives no allocation from the general fund. The Board is currently staffed by 90 people.

MAJOR PROJECTS

Citation and Fine Regulations Await OAL Approval. On January 20, BRN published notice of its intent to adopt section 1435-1435.7, Title 16 of the CCR, which would permit it to levy citations and fines against RNs and unlicensed persons for violations of the Nursing Practice Act and its corresponding regulations. The citation and fine regulations would authorize BRN's Executive Officer to issue citations and/or fines ranging from \$100 to \$2,500 for minor violations such as practicing with a suspended license and knowingly failing to protect patients by failing to follow infection control guidelines. [15:1 CRLR 91; 14:4 CRLR 97] The Board held a formal public hearing on these proposed regulatory changes on March 7 in Sacramento. At its April 7 meeting, BRN reviewed the comments received, and adopted the proposed citation and fine regulations without change. At this writing, BRN plans to finish its preparation of the final rule-making file and submit the package to the Office of Administrative Law (OAL) for review and approval by the end of May. BRN also plans to send informational reports to members of the public who submitted comments on the proposed regulations, in order to respond to what the Board considers to be misconceptions about the proposed rules.

BRN Considers Draft Regulatory Proposals. At its April 7 meeting, BRN approved in concept the following proposed regulatory changes regarding its Diversion Program for substance-abusing licensees [13:2&3 CRLR 106-07]:

- BRN's proposed change to existing section 1447, Title 16 of the CCR, would add to the criteria for admission to the Diversion Program a requirement that BRN has not yet filed an accusation to take disciplinary action against the license of the RN seeking admission. The Diversion and Discipline Committee reported that some RNs continue working until an accusation has been filed against them, at which point they seek entrance into the Diversion Program in order to protect their

licenses. The Committee noted that this practice harms public safety and increases the cost of enforcement to BRN, and believes this regulatory change would curtail this pattern of behavior.

- In addition to making nonsubstantive changes, BRN's proposed amendments to section 1448 would specify that the Diversion Evaluation Committee's decision on termination of a nurse's participation in the Diversion Program shall be final.

- BRN's proposed addition of new section 1448.2 would authorize the Diversion Evaluation Committee to permit an RN in BRN's Diversion Program to transfer to another state's diversion program under certain circumstances. Current regulations allow an RN to transfer from another state's rehabilitation or diversion program into BRN's program, but do not permit BRN's participants to do the same. According to Board staff, this has caused hardship to some participants, who either must continue in the program or face possible commencement of disciplinary action against them.

- BRN's proposed change to section 1449 would provide that an RN who has participated in the Diversion Program shall be deemed to have waived the confidentiality of the record pertaining to his/her participation in the program if the RN presents information relative to that participation at any disciplinary proceeding or settlement discussions. Currently, the Deputy Attorney General representing the Board in an enforcement proceeding may not access the participant's diversion record to present confirming or contradictory evidence even if the participant admits the record into evidence, because the participant has not been deemed to waive the confidentiality of the record.

At this writing, BRN has not yet published notice of these proposals in the *California Regulatory Notice Register*; nor has it taken further action on the regulatory proposals approved in concept at its September 1994 meeting. [15:1 CRLR 91]

Scope of RN Practice Regarding Laboratory Testing. In September 1994, Governor Wilson vetoed SB 1834 (Campbell); the bill, which was supported by BRN and opposed by the Department of Health Services (DHS), would have expressly permitted RNs to perform diagnostic testing, including the use of point-of-care laboratory testing devices. In his veto message, Governor Wilson declared support for the bill's intent to allow RNs to use point-of-care laboratory testing devices, but found that the bill's use of the phrase "perform diagnostic testing" was overly broad and could be interpreted in a manner that would expand the existing scope of RN practice.