ation of new categories of health professionals who were not required to be licensed on or before January 1, 1994, or revises the scope of practice of an existing category of health professional, be supported by expert data, facts, and studies, including prescribed information, and be presented to all legislative committees hearing the legislation prior to its enactment.

RECENT MEETINGS

At its January 7 meeting, SPAEC once again considered whether to require its licensees to complete continuing education (CE) coursework as a condition to license renewal. *[13:1 CRLR 57; 12:2&3 CRLR 126]* DCA representative Jackie Bradford explained that to implement a CE program, SPAEC would need authorizing legislation and supporting regulations. Once the program is in effect, monitoring CE offerings and the qualifications of CE providers requires great expense in terms of time and money. DCA legal counsel Bob Miller suggested that SPAEC approach related professional associations about pursuing legislative authorization. The Committee took no action on this issue.

Also at the January 7 meeting, Executive Officer Carol Richards suggested that the Committee waive its prior approval requirement for speech-language pathologist applicants who have gained their required professional experience (RPE) in the public preschool setting, a setting which is not currently exempt from licensure under Business and Professions Code section 2530.5 but which is proposed for exemption in SB 2101 (McCorquodale) (*see* LEGISLATION). Federal regulations require public preschools to provide speech therapy to preschool-age children, and many licensure applicants are gaining their RPE in this setting without obtaining prior approval by SPAEC; these applicants apparently believe that public preschool is an exempt setting under section 2530.5. After discussion at both its January and March meetings, SPAEC agreed to waive prior approval requirement for applicants who have completed sufficient RPE in public preschool settings.

Also in January, the Committee addressed the use in speech-language pathology or audiology advertisements of an unrelated degree, such as a Ph.D. in health care management, from a nonaccredited institution. DCA legal counsel Bob Miller stated that so long as an advertisement is truthful and not misleading, it must be permitted. At SPAEC's March 17 meeting, counsel Kelly Salter clarified the issue by presenting a DCA memorandum which states that advertisements must be clear as to the area of the degree if it is unrelated to the services being advertised, and there is no law preventing advertisement of a degree from an unaccredited institution.

At its January meeting, SPAEC re-elected Robert Hall as its Chair and Dr. Gail Hubbard as Vice-Chair for 1994.

FUTURE MEETINGS

July 22 in Irvine.
October 28 in San Francisco.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer:
Pamela Ramsey
(916) 263-2685

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Division 31, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

On January 14, BENHA welcomed new public member Jack Fenton, who was recently appointed to the Board by Assembly Speaker Willie Brown.

MAJOR PROJECTS

BENHA Continues Focus on Disciplinary Process. At its March meeting, the Board continued the examination of its disciplinary process it began in October 1993. The process by which BENHA tracks complaints against and disciplines NHAs is entangled with, and to a certain extent dependent upon, the process by which the Department of Health Services (DHS) receives, investigates, and prosecutes complaints against skilled nursing facilities. *[14:1 CRLR 69]*

Among other things, the Board considered several suggestions for legislative changes made by the Attorney General's Office, which prosecutes enforcement cases against NHAs on behalf of the Board. First, the AG's Office has recommended that BENHA seek a change to Business and Professions Code section 3928(a), which requires the AG to file and serve an accusation to revoke or suspend a NHA's license within twelve months of DHS' issuance of a temporary suspension order, service of an accusation to revoke the facility's license, or final decertification of the facility from the Medi-Cal or Medicare program. BENHA and the AG's Office are dependent on DHS for providing records and other evidence needed to prosecute an enforcement case. However, the information required by and the burdens of proof imposed upon BENHA and DHS are not identical; the mission of DHS is to regulate facilities, not NHAs. In addition to the problem of insufficient information, the AG's Office frequently does not receive DHS' package of information until well into the twelve-month period. Thus, BENHA agreed to seek legislation lengthening the time period within which the AG's Office may file an accusation against a NHA's license. At this writing, the Board is seeking to insert this amendment into SB 2101 (McCorquodale), the Department of Consumer Affairs' (DCA) 1994 omnibus bill (*see* LEGISLATION).

At the same meeting, the Board agreed to work with both DHS and the AG's Office in preparing guidelines as to what information BENHA needs in order to pursue a disciplinary action. DHS has tentatively agreed to consider gathering that information at the same time it gathers the documentation from the facility that it needs to pursue its own disciplinary actions. Determination of the information needed to prepare a case against a NHA would also enable DHS to ascertain whether that information is already being collected, and whether DHS has the staffing and resources to assist in retrieving any additional information required.

At the AG's suggestion, the Board also decided to obtain all "B" violations issued to a facility by DHS once BENHA decides to pursue an action against the facility administrator. Currently, BENHA only receives notice of "AA" (violations that result in the death of a patient) and "A" (violations that seriously endanger a patient's safety with a substantial probability of death or serious bodily harm) citations from DHS. "B" violations, which relate to physical plant or operational violations, are also a good indication of an administrator's performance, and can be used by the AG's Office to bolster a disciplinary action against a NHA.

Enhancements to Terms and Conditions of Probation. At its March 21 meeting, the Board approved the Disciplinary Committee's recommended terms and conditions which may be applied to NHAs whose licenses are put on probation. These terms and conditions will be considered on a case-by-case basis; not all terms and conditions will be applicable to all probationers. The terms of probation approved by BENHA include provisions for quarterly reports from the respondent to BENHA; compliance with a probation monitoring program; notification to BENHA of changes in employment; reimbursement to BENHA for its reasonable costs of investigating and prosecuting the case; tolling of the probation period for periods of residency or practice outside California; notice to the respondent's employer of the discipline imposed and proof of employer notification; retaking the licensure examination; completion of additional professional education courses specific to nursing home administration, additional continuing education coursework, and/or a course in ethics; restriction of practice to facilities of a specific type or size; psychological evaluation by a Board-approved psychologist who will furnish a report directly to BENHA; drug testing; attendance at alcohol or drug rehabilitation sessions; and license suspension. The final decision as to which terms and conditions will be applicable to a particular individual will rest with BENHA, at the recommendation of the Attorney General's Office and/or the administrative law judge who presides over the NHA's disciplinary hearing.

Public Disclosure Policy. At its March 21 meeting, BENHA agreed on a public disclosure policy. Under this policy, citations received from DHS will not be disclosed to the public; citation information is not made public by BENHA because citations are issued to the facility, not the administrator. If a caller asks for citation information, BENHA staff will refer the call to DHS. BENHA will provide information on accusations, statements of issues (license denial documents), final disciplinary decisions, and orders of probation.

Qualifications of Licensure Applicants. At its March 8 meeting, BENHA's Education Committee considered section 3116, Title 16 of the CCR, which sets forth required qualifications of applicants who wish to be admitted to take the NHA licensing exam. At a previous meeting, Dr. Louis Koff from the American College of Health Care Administrators expressed concern that the Board's licensing process does not measure the qualifications of a good NHA. He stated that some of the requirements in section 3116 restrict potentially competent NHAs from the field, while others fail to prevent incompetent administrators from becoming licensed. Particularly, Koff noted that completion of BENHA's administrator-in-training (AIT) program may be unnecessary for applicants with experience in health management. Board Executive Officer Pamela Ramsey suggested that BENHA's regulations could be amended to give Board discretion to decide what combination of experience and education requirements are sufficient to qualify NHA applicants to sit for the exam. Ramsey also suggested that a minimum competency examination be developed to aid the Board in determining which applicants would make effective NHAs.

Committee members noted that the National Association of Boards of Nursing Home Administrators (NAB) had recently completed an occupational task analysis (OTA) of the NHA profession. The OTA identifies major categories of tasks which are ordinarily undertaken by NHAs in the course and scope of their profession, and the knowledge, skills, and abilities (KSAs) needed to competently perform these tasks. Valid licensing exams and requirements for licensure should be based on a valid OTA and the resulting KSAs. The Education Committee decided to recommend that BENHA obtain a copy of NAB's OTA; ask the Department of Consumer Affairs' Central Testing Unit (CTU) either to evaluate BENHA's existing exam against NAB's OTA or an OTA on nursing home administration in California developed by CTU; and evaluate its existing licensure requirements in section 3116 against NAB's OTA (or a California-specific OTA developed by CTU). At its March 21 meeting, BENHA adopted the Education Committee's recommendation. The Board also appointed members Dr. Jon Pynoos and Sheldon Blumenthal to a subcommittee to review the sufficiency of the applicant qualifications in section 3116.

Examination and Enforcement Statistics. The pass rate for the October 1993 state NHA exam was 51%; the national exam pass rate was 49%. The pass rate for the January 1994 state NHA exam was 52%; the national exam pass rate was 52%.

From December 1, 1993 to February 28, 1994, DHS referred to BENHA one citation for an "AA" violation and 50 citations for "A" violations. During those three months, BENHA conducted nine informal telephone counseling sessions; issued no Medi-Care letters; conducted three formal telephone counseling sessions; and issued no letters of warning. BENHA received no accusations from DHS for review, requested no accusations against NHAs, and revoked no licenses.

In January, BENHA published its list of NHAs whose licenses have been suspended, revoked, or placed on probation. Six NHAs are on probation. Between January 1, 1991 and December 31, 1993, the licenses of five NHAs were revoked and three were surrendered. BENHA is required to publish information concerning the status of NHAs pursuant to AB 1834 (Connelly) (Chapter 816, Statutes of 1987).

BENHA Rulemaking. At its March 21 meeting, BENHA held a public hearing on its proposal to amend section 3140, Division 26, Title 16 of the CCR. Existing section 3140 specifies that all NHA licenses expire on June 30 of each even-numbered year; the proposed amendments would establish a birthdate renewal program whereby, commencing on July 1, 1994, NHAs would be given license expiration dates which coincide with their birth month and birth year. Such a renewal system will spread Board staff's license renewal workload more evenly throughout the year, and enable the Board to constantly maintain a prudent reserve fund.

Following the public hearing, BENHA decided to modify the proposed regulatory changes. The modified version, which was published on April 1 and again on April 6 for an additional public comment period ending on April 21, also incorporates a continuing education (CE) component into the birthdate-based licensing renewal process. The modified version prorates CE hours which must be completed during the transition period, after which each NHA must continue to complete 40 hours of CE during their individual two-year renewal period. The Board noted that section 3150 of its regulations must also be amended to conform to the changes being made to section 3140; BENHA plans to initiate the rulemaking process to amend section 3150 as soon as possible.

At this writing, BENHA has not yet adopted the proposed changes, and is expected to address them at its July 21 meeting.

Long-Term Care Demonstration Project. BENHA recently concluded its participation in a twelve-month, multi-agency Quality of Long-Term Care Demonstration Project. The purpose of the project was to improve the effectiveness of the Department of Aging's Long-Term Care Ombudsman Program; the Program receives and refers complaints associated with long-term care to appropriate state regulatory agencies. The Program is also responsible for advocating for residents in skilled nursing facilities, intermediate care facilities, adult day health care centers, adult residential facilities, and residential care facilities for the elderly. BENHA was one of nine state regulatory agencies to participate in the project. *[13:2&3 CRLR 98; 13:1 CRLR 58]*

Under the Program, approximately 1,000 state sub-Ombudsmen work under the supervision of 35 Ombudsmen coordinator/managers in providing advocacy services to more than 150,000 residents living in over 7,000 facilities. An average of 47,000 complaints are investigated annually. These complaints are received when Ombudsmen visit long-term care facilities or through a statewide toll-free hotline (1-800-231-4024). Almost 90% of the complaints are resolved by Ombudsmen at the local level. Approximately 7,000 complaints are referred annually to local agencies and state licensing agencies, either because they are very complex or require investigation by agencies that have legal and jurisdictional responsibility to handle situations that place residents at risk.

The Demonstration Project Committee developed a *Long-Term Care Ombudsman Resource Manual* to inform Ombudsmen about the various state regulatory agencies involved in the care of residents in long-term care settings. These agencies include health personnel licensing boards (including BENHA, the Medical Board of California, the Board of Registered Nursing, the Physician Assistant Examining Committee, the Board of Vocational Nurse and Psychiatric Technician Examiners, and the Board of Pharmacy), facility licensing programs (*e.g.*, the Licensing and Certification Program in the Department of Health Services and the Community Care Licensing Division in the Department of Social Services), and the Bureau of Medi-Cal Fraud within the Attorney General's Office.

The Committee also developed a special complaint form to facilitate sharing of important information between Ombudsmen and the regulatory agencies. This form, called the *Complaint From Long-Term Care Ombudsman*, identifies the various agencies receiving the same complaint and will help them coordinate their investigative activities. It is hoped that use of this form will improve efficiency and result in cost savings.

LEGISLATION

SB 2101 (McCorquodale), as amended April 4, would change BENHA's name to the State Board of Nursing Home Administrators. *[14:1 CRLR 70]* During the summer, BENHA hopes to add language amending Business and Professions Code section 3928(a) to SB 2101 (*see* MAJOR PROJECTS). *[A. Health]*

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within the Department of Consumer Affairs (DCA), requiring each to be comprehensively reviewed every four years. SB 2036 would impose an initial "sunset" date of July 1, 1998 for BENHA; create a Joint Legislative Sunset Review Committee within the legislature, which would review BENHA's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which BENHA's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether BENHA should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BENHA would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. (*See* agency report on DCA for related discussion of the "sunset" concept.) *[S. Appr]*

AB 3660 (Caldera). Under existing law, BENHA is authorized to set and charge fees for, among other things, the application and examination of applicants for licensure as NHAs. As amended April 4, this bill would revise the Board's fee schedule by increasing several of its fees. *[S. B&P]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 70:

AB 1807 (Bronshvag). Existing law generally requires that every prescription for a Schedule II controlled substance be in writing; however, when failure to issue a prescription for a Schedule II controlled substance to a patient in a licensed skilled nursing facility, an intermediate care facility, or a licensed home health agency providing hospice care would, in the opinion of the prescriber, present an immediate hazard to the patient's health and welfare or result in intense pain and suffering to the patient, the prescription may be dispensed upon an oral prescription. As amended March 23, this bill instead provides that any order for a Schedule II controlled substance in a licensed skilled nursing facility, intermediate health care facility, or a licensed home health agency providing hospice care may be dispensed upon an oral or electronically transmitted prescription. This bill also requires each such facility to forward to the dispensing pharmacist a copy of any signed telephone order, chart order, or related documentation substantiating each oral prescription transaction. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 1139 (Epple). Existing law authorizes an attending physician and a skilled nursing or intermediate care facility to initiate a medical intervention, that requires the informed consent of the patient, for a resident of that facility when the physician has determined that the resident lacks the capacity to provide informed consent and after the facility conducts an interdisciplinary team review, as described, of the prescribed medical intervention. Under existing law, this authority expires on January 1, 1995. As amended April 22, this bill would require DHS to convene a committee of specified composition to assess the need for changes to the process for the initiation of medical intervention for long-term health care facility residents. This bill would require the committee to make recommendations to the legislature regarding any identified changes to be made to that process by January 1, 1995. *[S. H&HS]*

RECENT MEETINGS

At its March 21 meeting, the Board considered the issue of limiting the number of examinations for which applicants may sit. Currently, there is no restriction on the number of times which an applicant may sit for the licensure exam. Some Board members expressed concern that a few applicants have retaken the exam many times, possibly compromising the integrity of the exam. Other members felt that as long as applicants are paying the cost of administering the exam, and as long as the exam is updated regularly, there should be no restriction on the number of exam sittings permitted. BENHA agreed to table this item until after the OTA is developed and the subject matter and format of the revised examination are determined (*see* MAJOR PROJECTS).

Also at its March 21 meeting, the Board considered the issue of AIT Program evaluation. Presently, BENHA has no mechanism to judge the effectiveness of this training program, apart from the licensure examination. The possibility of entering into a formal contract with the American College of Health Care Administrators was discussed and rejected, due to the cost factor. The Education Committee recommended that AITs themselves evaluate the program. The Board agreed, and decided to establish an evaluation mechanism whereby the AITs will routinely evaluate the training programs.

Also at the March 21 meeting, the Board again considered the subject of maximum allowable AIT hours per week. *[14:1 CRLR 70]* Executive Officer Ramsey noted that AITs frequently request an increase in the number of permitted hours in order to meet established examination deadlines. Existing section 3162, Title 16 of the CCR, specifies that AITs must work a minimum of 20 hours per week, but no maximum is stated. Ramsey reminded the Board that, at its October 1993 meeting, it had decided to allow a maximum of 60 hours per week, but that each request was to be reviewed individually and that approval would be at the discretion of the Executive Officer; allowance will depend upon whether the AIT is training full-time or combining the training with a full- or part-time job. The Board decided that Ms. Ramsey should evaluate requests for additional AIT hours based on those guidelines, and that a regulation change reflecting those guidelines should be pursued.

FUTURE MEETINGS

July 21 in San Francisco.
September 22 in Sacramento (tentative).

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger (916) 323-8720

Pursuant to Business and Professions Code section 3000 *et seq.*, the Board of Optometry is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board establishes and enforces regulations pertaining to the practice of optometry, which are codified in Division 15, Title 16 of the California Code of Regulations (CCR). 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 licensed optometrists and three public members.

At its March 11–12 meeting, the Board welcomed new member Robert Dager, OD, to replace Kenneth Woodard, OD, on the Board. Two additional positions on the Board will become vacant when the terms of Thomas Nagy, OD, and Stephen Chun, OD, expire at the end of June.

MAJOR PROJECTS

OAL Approves Regulatory Changes on Disclosure of Prescription Release Policy and Delegation of Functions. On March 15, the Office of Administrative Law (OAL) approved the Board's amendment to section 1502 and addition of new section 1566, Title 16 of the CCR. The amendment to section 1502 delegates and confers solely upon the Board's Executive Officer—instead of upon the Board Secretary—enforcement-related functions involving the filing of accusations, issuing notices of hearings, statements to respondents, statements of issues, and other powers and duties conferred by law on the Board. New section 1566 requires each optometry office to post in a conspicuous place a notice which clearly states the legal requirements and office policy regarding the release of spectacle and contact lens prescriptions. Section 1566 was opposed by the California Optometric Association (COA), which argued the notice requirement will be "overly burdensome." *[14:1 CRLR 72; 13:4 CRLR 77]* The Board plans to include an example of an acceptable notice posting which satisfies the requirements of section 1566 in its July newsletter. The notice must, at a minimum, contain the following information: "Federal law requires that a written copy of the spectacle prescription be given out to the patient. However, the law does not require the release of a contact lens prescription; this is left to the discretion of the optometrists. You may want to inquire about your doctor's policy regarding contact lens prescriptions prior to the examination."

Letter Regarding Scope of Co-Managed Care Between Optometrist and Ophthalmologist Causes Controversy. At its March 11 meeting, the Board heard from COA counsel William Gould and Norma Dillon, Director of COA's Governmental Affairs Division, who expressed concern about a February 22 letter from Marsha Roggero, Staff Services Analyst with the Medical Board of California (MBC), to the Eye Surgery Center of Northern California. In her letter, Roggero admonished an ophthalmologist at the Eye Surgery Center for his distribution to optometrists of a letter soliciting referrals of patients to him for surgery in return for referral of the patients back to the optometrist for "co-managed post-operative cataract care"; according to Roggero's letter, MBC has determined that such an arrangement "is improper because it violates the patient referral kickback prohibition of Section 650 of the California Business and Professions Code." Roggero also stated that post-operative cataract care "exceeds the scope of optometric practice and thereby violates Business and Professions Code Section 2052." Roggero's letter included an excerpt from a "legal opinion adopted by the [Medical] Board," which provides that section 650 is violated when an understanding exists between an ophthalmologist and an optometrist that the optometrist will make referrals to an ophthalmologist who will return the patient to him/her for the provision of services the ophthalmologist would otherwise provide. According to Roggero, the legal opinion also states that in California, "optometrists may not provide post-operative care to surgical patients" because "[p]ost-operative care is examination for the purpose of diagnosis," and "California does not permit optometrists to diagnose." In sum, Roggero asserted that "[d]elegation of post-operative care to an optometrist is inappropriate and unlawful because the optometrist is neither qualified by training or experience to diagnose post-surgical complications, nor licensed to provide the necessary treatment."

At the March meeting, Gould noted that he requested MBC to provide him with a copy of the legal opinion Roggero referred to in her letter. Tony Arjil, Program Manager of MBC's Division of Allied Health Professions (DAHP), commented that Roggero had obtained the legal opinion from the California Medical Association (CMA), not from MBC. According to Arjil, MBC had not previously adopted any policy or opinion concerning optometrist participation in the management of post-operative cataract care; however, Arjil noted that MBC had recently asked its legal counsel for a formal opinion, which had not yet been issued. Following discussion, Board president John Anthony requested that staff send a letter to MBC to clarify the Board's position on co-management of post-operative cataract care.

By letter of March 15, Board President John Anthony informed MBC that Roggero's letter "grossly misstates the scope of lawful optometric practice,...contains a negatively framed discussion of patient referrals involving ophthalmologists and optometrists, [and] tends to discourage *lawful* professional relationships between