



occupational analyses would be useful not only in evaluating SPAEC's licensing exams but also in professional training programs seeking to help students focus on specific areas of practice.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 88-89:

SB 2037 (McCorquodale), as amended August 30, would have (among other things) merged SPAEC and HADEC into a single board under the jurisdiction of MBC. This bill died on the Senate floor on August 31 (see MAJOR PROJECTS).

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review process for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1999 on SPAEC; creates a Joint Legislative Sunset Review Committee which will review SPAEC's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which SPAEC's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether SPAEC 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 SPAEC would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

SB 2101 (McCorquodale), as amended July 7, states that no provision of the Speech-Language Pathologists and Audiologists Licensure Act may be construed as restricting or preventing the practice of speech-language pathology or audiology by personnel holding the appropriate credential from the Commission on Teacher Credentialing as long as the practice is conducted within the confines of or under the jurisdiction of a public preschool by which they are employed. [14:2&3 CRLR 89] This bill was signed by the Governor on September 30 (Chapter 1275, Statutes of 1994).

AB 1392 (Speier), as amended August 17, is no longer relevant to SPAEC.

RECENT MEETINGS

At SPAEC's July 22 meeting, DCA legal counsel Kelly Salter proposed a general policy for retaining Committee meet-

ing records. Specifically, Salter suggested that the Committee erase the audiotapes which are used in drafting Committee meeting minutes after the minutes are prepared; Salter indicated that such a policy is necessary because the approved minutes of each meeting should constitute the final record of resolutions adopted by the Committee. In the absence of a policy, SPAEC has been retaining the tapes for three years before reusing them. The Committee approved a motion permitting the tapes to be reused after the minutes have been approved by the Committee.

Also on July 22, SPAEC discussed a possible 1995 legislative proposal. Business and Professions Code section 2532.2(c) requires speech-language pathologist and audiologist candidates to complete 300 hours of supervised clinical practice in order to be licensed by SPAEC. The American Speech-Language Hearing Association (ASHA), the national accrediting body for training programs, has recently increased its minimum number of supervised clinical practice hours to 400. To bring California into conformity with ASHA's national accreditation standards, SPAEC may sponsor a legislative amendment to section 2532.2(c) to increase the number of required clinical practice hours to 400.

FUTURE MEETINGS

October 28 in San Francisco.

January 20, 1995 in southern California.

April 7, 1995 in northern California.

July 21, 1995 in southern California.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer:

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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 July 21, BENHA welcomed new public member Gloria Sutton-Clark, who was appointed to the Board by Assembly Speaker Willie Brown to fill the remainder of Jack Fenton's term; Sutton-Clark is an Assistant U.S. Attorney with the U.S. Attorney's Office in San Diego. Also at the July meeting, Nancy Campbell announced her resignation from BENHA; Campbell was recently named Deputy Director of Board Relations at the Department of Consumer Affairs (DCA).

MAJOR PROJECTS

Board Begins Improvements to Disciplinary Process. At its July 21 meeting, the Board discussed its ongoing efforts to improve its disciplinary process; the Board began to focus on this issue in October 1993. Currently, the Board is seeking to improve the process through legislative changes, increased interaction with the Attorney General's (AG) Office and the Department of Health Services (DHS), and the development of disciplinary guidelines. [14:2&3 CRLR 89; 14:1 CRLR 69]

For example, over the summer BENHA and DCA were successful in adding a provision to SB 2101 (McCorquodale) which amends Business and Professions Code section 3928(a) to allow the AG—which prosecutes enforcement cases on behalf of the Board—24 instead of 12 months to file an accusation against an NHA after a qualifying event; section 3928(a) includes as "qualifying events" DHS' issuance of a temporary suspension order against a facility, service of an accusation to revoke a facility's license, or final decertification of the facility from the Medi-Cal or Medicare program. The Board originally sought an amendment which would provide the AG



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36 months within which to file the accusation, but reduced the number to 24 after strenuous objection by the California Association of Health Facilities (CAHF), a professional organization representing California-licensed long-term health care facilities.

Despite the Board's attempt to compromise, CAHF continued to oppose the bill. In a June 29 letter to Senator McCorquodale, CAHF Program Director of Legislation Kathryn Ruff-Andonian contended that the extended time period would "allow poor administrators to continue to run facilities for an extended period of time" and "deprive administrators of due process when presenting their cases" due to the two-year lapse between the action taken against the facility and service of an accusation against their NHA license. Despite CAHF's opposition, SB 2101 was signed by the Governor on September 30 (see LEGISLATION).

In addition to the legislative changes, BENHA met with DHS in an effort to improve communication and cooperation. Because BENHA is dependent on DHS for information about cited facilities (through which the Board is able to track NHA performance and determine the need for disciplinary action), it is critical that communication between the two agencies is unimpeded. At BENHA's July 21 meeting, Executive Officer Pamela Ramsey reported that on May 10 she met with DHS officials to discuss, among other things, the information and evidence which is needed by the AG's Office in order to prosecute a disciplinary action for BENHA. Ramsey informed DHS officials that BENHA staff had experienced difficulty in obtaining information from some DHS district offices because some DHS staff members do not know that BENHA is entitled to receive certain documents. Ramsey reported that according to the AG, BENHA is entitled to receive medical records pursuant to Business and Professions Code section 3928. Ramsey and DHS officials agreed that BENHA would send a copy of all second requests for information to DHS' Field Operations Branch Chief, and/or contact him/her by telephone if requested information is not being transmitted to BENHA staff as needed. Ramsey also suggested that DHS prepare a legal opinion for distribution to all of its district offices regarding which records BENHA is authorized to receive.

BENHA's proposed disciplinary guidelines are currently being drafted by Ramsey with the help of legal counsel, and—at this writing—are expected to be ready for review by the Board's Disciplinary Committee at its October meeting.

Enhancements to Terms and Conditions of Probation. At its July meeting, the Board made several revisions to the guidelines for terms and conditions of license probation it adopted at its March meeting. [14:2&3 CRLR 90] Several changes clarified the Board's discretionary ability to impose any or all of the terms and conditions when appropriate. In addition, the document will now be referred to as "guidelines" instead of a "policy."

CAHF has challenged the Board's guidelines on the basis that they constitute underground rulemaking; in a June 21 letter to former BENHA Chair Nancy Campbell, CAHF legal counsel J. Mark Waxman maintained that the probation policy constitutes a rule of general application and therefore must be adopted in accordance with the formal rulemaking process set forth in the Administrative Procedure Act (APA). Among other things, the APA requires notice, opportunity for public comment, and final approval by the Office of Administrative Law (OAL). CAHF has requested that BENHA follow the procedure set forth in the APA before implementing the guidelines. BENHA referred Waxman's letter to DCA legal counsel for review and response, but has not indicated that it will defer implementation of the guidelines.

Education Subcommittee Reviews Qualifications Regulation. The two-person subcommittee established at BENHA's March 8 meeting has finished reviewing section 3116, Title 16 of the CCR, which sets forth the required qualifications of applicants who wish to be admitted to take the NHA licensing examination; the Board initiated the review out of concern that the Board's existing licensing process does not adequately measure the qualifications of a good NHA. [14:2&3 CRLR 90] As a result of the review, the subcommittee proposed amendments to section 3116 that would waive 500 of the otherwise-required 1,000-hour administrator-in-training (AIT) program for applicants who have at least five years of experience in the last ten years, with supervisory and budgetary responsibility in one of the following positions or their equivalent: hospital administrator, assistant administrator in a health care facility with 100 or more beds, director of a hospital-based facility, director of a subacute or transitional care unit, director of the department of nursing, health care consultant to the long-term care industry, or director of a community-based long-term care service. In addition, the proposed amendments would provide that twenty years of full-time work experience as a California-licensed NHA or as

a hospital administrator may substitute for completion of an AIT program.

Following discussion, BENHA voted to approve the draft amendments in concept and publish them for a regulatory hearing in December. However, DCA legal counsel Don Chang expressed some reservations regarding the phrase "or their equivalent" as used in the section authorizing the waiver of 500 hours of the AIT program. Chang and some members of the Board felt that the language is too vague and suggested that the Board define the equivalent of the listed positions. The Board directed Executive Officer Pamela Ramsey to investigate other states' criteria and report back to the Board.

Board Considers Automated Examination Process. The National Association of Boards of Examiners for Nursing Home Administrators (NAB) is scheduled to begin a pilot project for automated exams in January 1995. At BENHA's July meeting, Executive Officer Pamela Ramsey stated that she had initially declined to participate in the pilot project due to CAHF's "oppose unless amend" position on BENHA's license fee increase bill, AB 3660 (Caldera) (see LEGISLATION); according to Ramsey, there was some question whether the Board would be able to charge the fees necessary to automate the exam without passage of the bill. Now that AB 3660 has been approved, Ramsey has met with NAB regarding coordination of the automation process and is trying to facilitate the process of selecting a vendor to administer the exam. Ramsey noted that she will arrange to have a vendor give a presentation to the Board at a future meeting to discuss implementation issues.

Examination and Enforcement Statistics. The overall pass rate for the April 1994 state NHA exam was 45%; the national exam pass rate was 47%.

From March 1 to June 30, DHS referred to BENHA five citations for "AA" violations (those violations which result in the death of a patient) and 64 citations for "A" violations (those violations that seriously endanger a patient's safety with a substantial probability of death or serious bodily harm). During the same time period, BENHA conducted two informal telephone counseling sessions and one formal telephone counseling session; issued two letters of warning; and issued two Medicare letters. Further, BENHA received no accusations from DHS and revoked no licenses. However, BENHA requested the filing of four accusations against NHAs.

BENHA Rulemaking. On August 25, OAL approved BENHA's amendments to section 3140, Title 16 of the CCR, which



establish a birthdate renewal program for NHAs. [14:2&3 CRLR 90]

At the Board's July 21 meeting, Executive Officer Pamela Ramsey asked BENHA to consider additional amendments to the Board's regulations. Specifically, the proposed amendments would authorize continuing education (CE) credit for Board meeting attendance; set a maximum number of hours an AIT may work per week [14:2&3 CRLR 92]; revise the Board's fee regulation to conform it with AB 3660 (Caldera) (see LEGISLATION); amend section 3141 to conform it with the biennial birthdate renewal cycle; amend several provisions to reflect the Board's name change to the Board of Nursing Home Administrators, as specified in SB 2101 (McCorquodale) (see LEGISLATION); amend the preceptor qualification requirements to add that the preceptor must hold an active NHA license and may not hold a probationary license; and specifically authorize the acceptance of NAB-approved CE courses. The Board voted to accept Ramsey's recommendations and directed legal counsel to draft regulatory language for review at the Board's December meeting.

LEGISLATION

Future Legislation. At its July 21 meeting, BENHA discussed the lack of CE requirements for delinquent licensees who renew their licenses after a lapse in practice; currently, no provision requires prorated CE units during the three-year period that a licensee may be delinquent before he/she must reapply. Some Board members expressed a desire to see a provision requiring delinquent licensees to make up CE units; the Board voted to place this issue on a future agenda for consideration of a legislative proposal.

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 91:

SB 2101 (McCorquodale), as amended July 7, changes BENHA's name to the State Board of Nursing Home Administrators, effective January 1, 1995. This bill also increases from twelve to 24 months the length of time within which BENHA may serve an accusation to suspend or revoke an administrator's license after DHS' issuance of a temporary suspension order, service of an accusation to revoke a facility's license, or final decertification from the Medi-Cal or Medicare program (see MAJOR PROJECTS). This bill was signed by the Governor on September 30 (Chapter 1275, Statutes of 1994).

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review pro-

cess for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1998 for BENHA; creates a Joint Legislative Sunset Review Committee which will review BENHA's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BENHA's performance will be evaluated. Following review of the agency and a public hearing, the Committee will 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. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

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 August 11, this bill revises the Board's fee schedule by increasing several of its fees. This bill was signed by the Governor on September 30 (Chapter 1120, 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 of the prescribed medical intervention. Under existing law, this authority would be repealed on January 1, 1995. As amended August 18, this bill defines the term "lack of capacity" for purposes of these provisions, revises the review process, and extends this authority until January 1, 1997. This bill requires DHS to convene a committee of specified composition to assess the need for changes to the process for the initiation of medical intervention, and to make recommendations to the legislature regarding any identified changes to be made to that process by July 1, 1995. This bill was signed by the Governor on September 25 (Chapter 791, Statutes of 1994).

RECENT MEETINGS

At its July 21 meeting, the Board established two subcommittees to its Education Committee. One subcommittee will work with colleges and universities re-

garding internship programs; Sheldon Blumenthal and Sister Sienna Wald were appointed to this subcommittee. The Board also established an AIT/Preceptor Program Review Subcommittee, which will consist of Board members Blumenthal and Wald; professional association representatives Sally Rapp, Louis Koff, Georgann Taylor, and a representative from CAHF will also participate on this subcommittee.

Also at BENHA's July 21 meeting, Ramsey reported that the Department of Finance approved the Board's budget deficiency request; with that approval, the Board's fiscal year 1993-94 budget was augmented by approximately \$79,000. Of that amount, approximately \$55,000 will be used to cover the prosecution of enforcement cases currently pending at the AG's Office; \$1,900 will be used to support increased examination costs; \$11,785 will cover in-state travel expenses; \$3,000 will augment consultant services; and \$4,600 will pay for the Board's temporary help.

Also in July, Orrin Cook, MD, took over as BENHA Chair; Dr. Cook previously served as Vice-Chair under Nancy Campbell, who recently resigned from the Board. The Board unanimously elected Sheldon Blumenthal to serve as Vice-Chair.

FUTURE MEETINGS

December 7 in San Diego.
February 16, 1995 in Los Angeles.
May 11, 1995 in Sacramento.
August 17, 1995 in San Francisco.
November 9, 1995 in San Diego.

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger
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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.

On June 10, Governor Wilson appointed optometrist Steven Grant to the