



cists are reimbursed for covered drugs based on prices determined by the Department; existing law authorizes pharmacists to select a generic drug type, as defined, over a name brand drug product when filling a prescription, unless the prescriber specifies otherwise. As amended May 5, this bill would require that a generically substitutable product shall not be reimbursable if the DHS Director determines that a product from a company subject to rebates as an innovator company under federal law is lower in net cost to the state than a generically substitutable product not subject to the rebates; it would require the Director to notify pharmacists of these determinations. [S. Appr]

■ LITIGATION

Plaintiffs are appealing the trial court's ruling in *Californians for Safe Prescriptions v. California State Board of Pharmacy*, No. BS019433 (Dec. 15, 1992), which held that the Board followed and complied with the Administrative Procedure Act in promulgating and adopting its pharmacy technician regulations. [13:1 CRLR 62] Plaintiffs, members of a non-profit organization consisting of approximately 5,000 licensed pharmacists, filed a notice of appeal on January 5; at this writing, no date for oral argument has been set.

On February 18, the California Supreme Court granted the pharmacy's petition for review of the Fifth District Court of Appeal's decision in *Huggins v. Longs Drug Stores California, Inc.*, No. F016033 (Dec. 4, 1992). The appellate court held that a pharmacist's provision of incorrect dosage amounts for a prescription which the pharmacist knew or should have known would be administered to an infant by the infant's parents constitutes negligent action directed at the parent caregivers, which may allow the caregivers to recover damages for negligent infliction of emotional distress. [13:1 CRLR 63]

■ RECENT MEETINGS

At the Board's January 20-21 meeting, the Board considered its Long-Term Care Committee's recommendation that it adopt proposed standards for pharmacies servicing long-term care facilities. Among other things, the standards state the obligations of pharmacies servicing such facilities, which include establishing procedures for obtaining and providing necessary drugs on a timely manner, including on a 24-hour basis, and for the availability of emergency drug supplies, in conformity with federal and state laws and regulations, and maintaining drug information services available to facility nursing staff, prescribers, other physi-

cians, and the facility's consultant pharmacist. Following discussion, the Board unanimously adopted the standards.

■ FUTURE MEETINGS

October 6-7 in Sacramento.

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 8805 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR).

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.

The Board consists of thirteen members: seven public members, one licensed land surveyor, four registered Practice Act engineers and one Title Act engineer. Eleven of the members are appointed by the Governor for four-year terms which expire on a staggered basis. One public member is appointed by the Speaker of the Assembly and one by the Senate Rules Committee.

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. The committees function in an advisory capacity unless specifically authorized to make binding decisions by the Board.

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. 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 authorities linked to the civil Practice Act and require an additional examination after qualification as a civil engineer.

At its January 29 meeting, PELS selected Harold L. Turner as its new Executive Officer; Turner, formerly California's Deputy Auditor General, was hired to replace Darlene Stroup, who resigned in August 1992. [13:1 CRLR 64] In February, Governor Wilson announced the appointment of Stephen H. Lazarian as PELS' new public member; Lazarian is a self-employed attorney from Pasadena who formerly served on the Contractors State License Board from 1985-92 and was its chair from 1988-89.

■ MAJOR PROJECTS

Proposed Elimination of Title Act Protection for Traffic Engineers. At its March 12 meeting, PELS discussed the possible elimination of Title Act coverage for traffic engineering. The proposed action is opposed by S.E. Rowe, General Manager of the City of Los Angeles' Department of Transportation, who contends that title protection for traffic engineering is necessary primarily because of its "extreme implications in saving lives and reducing injuries and property damage to the public." If protection is eliminated, Rowe contends that a registered civil engineer with little or no experience in traffic engineering could make traffic recommendations on behalf of his/her clients. Department of Consumer Affairs (DCA) legal counsel Don Chang noted that preparation of certain traffic mitigation or worksite traffic control plans does not constitute the practice of civil engineering. Board President Larry Dolson referred the matter to a special committee to further consider the scope of Title Act coverage.

At PELS' April 23 meeting, Board member Ted Fairfield reported that, based on a review of current National Council of Examiners for Engineering and Surveying (NCEES) test questions and most college curricula, there appear to be inconsistencies between the definition and educa-



tion/testing for civil engineering and traffic engineering; Fairfield noted that civil engineers are educated in traffic engineering, since 20% of NCEES' examination questions relate either directly or indirectly to traffic engineering. Thus, civil engineers would appear to be qualified to practice traffic engineering. The Board agreed to research this issue in depth to determine whether statutory or regulatory revisions are appropriate.

PELS Denies Reconsideration of Underground Rulemaking Petition. On January 25, attorney William Goode submitted a request for reconsideration of PELS' November 20 decision rejecting Goode's claim that the Board had, among other things, engaged in underground rulemaking. Goode is challenging the definition of the term "negligence" which was allegedly used by PELS in a disciplinary case; Goode contended that the definition is legally unacceptable and constitutes underground rulemaking because it was not formally adopted pursuant to the Administrative Procedure Act. [13:1 CRLR 66]

In his request for reconsideration, Goode reiterated the same arguments presented in his original petition, and further charged that the Board's written decision denying his petition is "grossly inaccurate and misleading" and that he was denied the opportunity to respond to "misleading and legally incorrect advice" given to PELS by its legal counsel at the Board's November 20 meeting.

At its March 12 meeting, PELS denied the request for reconsideration; however, it unanimously directed the Executive Officer to send Goode a letter thanking him for presenting issues that needed Board resolution.

Board Considers New Examination Administration. At its April 23 meeting, PELS explored the possibility of administering some of its examinations in-house and requesting the assistance of the Department of Consumer Affairs' (DCA) Central Testing Unit for test validation purposes. Specifically, PELS is considering whether to develop and administer its own Special Four examinations (corrosion, quality, safety, and traffic). The Board presently contracts out for these testing services at an approximate cost of \$100,052 for fiscal year 1994-95 and \$78,708 for fiscal year 1995-96; the benefits of contracting out include receiving the testing expertise provided by a professional testing service. However, in-house administration may provide more flexibility and continuity, and would guarantee test validation expertise by using DCA's Central Testing Unit. According to PELS,

the cost of conducting these examinations in-house would be reduced to \$77,842 for fiscal year 1994-95 and \$56,108 for fiscal year 1995-96. The Board tabled a motion to administer its examinations in-house until the matter can be explored further.

PELS Rulemaking. On January 22, PELS conducted a public hearing on proposed amendments to section 464 and its proposed adoption of new sections 472 and 472.5, Title 16 of the CCR.

The proposed amendments to sections 472 and 472.5 would implement provisions of SB 2044 (Boatwright) (Chapter 1135, Statutes of 1992), creating a regulatory scheme under which the Board may impose citations and levy fines against licensed and unlicensed persons for violations of the Board's statutes and regulations. [13:1 CRLR 68]

Section 464 provides that when a survey is a retracement of lines shown on a recorded map, no material discrepancies with the record are found, and sufficient recorded monumentation is found to establish the precise location of property corners thereon, a corner record may be filed in lieu of a record of survey for any property corners which are set or reset or found to be of a different character than indicated by prior records. PELS proposes to amend this regulation to delete the requirement that the monumentation found to establish the precise location of property corners must be recorded. [13:1 CRLR 66]

At the hearing, numerous issues were raised regarding various aspects of these proposals; in light of the controversy, the Board agreed to conduct a second public hearing to accept further public comment. Subsequently, PELS renoticed its intent to pursue these regulatory changes on February 26, and conducted a second public hearing on April 22; at this writing, the Board is scheduled to consider the adoption of these regulatory proposals at its June 4 meeting.

PELS To Pursue Change to Curriculum Requirement. At its April 23 meeting, PELS agreed to commence the rulemaking process to amend section 460, Title 16 of the CCR, regarding Board-approved curricula. Among other things, section 460 currently provides that a curriculum approved by PELS as qualifying a graduate for four years' engineering experience, or a non-graduate for one-half year of experience for each year of study completed, is defined as any engineering curriculum leading to a first degree in engineering accredited by the Accreditation Board for Engineering and Technology (ABET). PELS proposes to add a provision to section 460 stating that the

effective date of accreditation shall be one year prior to that specified in ABET's current yearbook. At this writing, PELS has not yet published notice of its intent to pursue this change in the *California Regulatory Notice Register*.

LEGISLATION

AB 1807 (Bronshvag), as amended May 3, would add additional titles to the list of titles that may be used only by a registered professional engineer.

Under existing law, the provisions of the Professional Engineers Act pertaining to registration of professional engineers in the branches of chemical, electrical, industrial, mechanical, metallurgical, and petroleum engineering do not apply to employees in the communication industry, or to employees of contractors while engaged in work on communication equipment. This bill would recast these provisions to instead make the provisions of the Act pertaining to registration of professional engineers other than civil, geotechnical, or structural engineers inapplicable to those employees.

Existing law requires PELS to prepare a roster and a supplemental roster of all registered professional engineers, and a roster and supplemental roster of all licensed land surveyors. This bill would delete the requirement that PELS prepare the supplemental rosters of professional engineers and licensed land surveyors, and would require that the rosters be a public record.

This bill would revise requirements relating to engineering plans, specifications, reports, or documents prepared by a registered engineer to require that they bear a seal and the expiration date of the registration of the engineer; this bill would also require licensed land surveyors to obtain a seal, and would require that the license expiration date be shown within the confines of the seal.

This bill would also eliminate a technical advisory committee required to be appointed by PELS for purposes of advising the Board regarding the use of the titles "soil engineer," "soils engineer," and "geotechnical engineer."

Finally, this bill would delete PELS' authorization to waive the second division of the professional engineers' examination for certain qualified persons. [A. W&M]

AB 1363 (Lee). Existing law provides that if the county surveyor finds that the record of survey does not comply, as specified, it shall be returned to the person who presented it, together with a written statement of the changes necessary. Existing law also provides that the licensed



land surveyor or registered civil engineer submitting the record may then make the agreed changes and note on the map those matters which cannot be agreed upon, and resubmit the survey. As introduced March 3, this bill would require the licensed land surveyor or registered civil engineer to make the agreed changes and note on the map any specific matters which cannot be agreed upon, before resubmission. The bill would also provide that the land surveyor or civil engineer and county surveyor shall not be prevented from resolving their differences prior to resubmission.

The bill would also provide that a record of survey may also be prepared and filed for the express purpose of (1) rescinding the effect of prior matters of disagreement, as specified, or (2) rescinding the effect of prior county surveyor opinions, as specified. The bill would provide that a record of survey amended and filed pursuant to this provision shall include an explanation of how these matters of disagreement or opinion were resolved. [A. Floor]

SB 296 (Ayala). Existing law permits a licensed land surveyor to offer to practice, procure, and offer to procure civil engineering work incidental to his/her land surveying practice, even though he/she is not authorized to do that work, provided all civil engineering work is performed by or under the direction of a registered civil engineer. As introduced February 17, this spot bill would make technical, nonsubstantive changes to existing law. [S. Rls]

AB 358 (Eastin). Existing law requires that all contracts awarded by any state agency, department, officer, or other state governmental entity for construction, certain professional services, material, supplies, equipment, alteration, repair, or improvement have statewide participation goals of not less than 15% for minority business enterprises, not less than 5% for women business enterprises, and not less than 3% for disabled veteran business enterprises. Existing law defines minority business enterprise, women business enterprise, and disabled veteran business enterprise for purposes of these provisions.

As amended March 24, this bill would add to these definitions the requirement that if a business concern performs engineering or land surveying services, the persons who control the management and daily operations of the business shall be appropriately licensed or registered to render these services. In addition, the bill would require that if a business concern performs more than one of these professional services, a person who controls the

management and daily operations of the business need only be licensed or registered to render any one of these individual services. [A. U&C]

SB 842 (Presley), as amended April 13, would permit PELS to issue interim orders of suspension and other license restrictions, as specified, against its licensees. [A. CPGE&ED]

■ LITIGATION

In *Center for Public Interest Law (CPIL) v. Board of Registration for Professional Engineers and Land Surveyors*, No. 371217 (Feb. 5, 1993), the Sacramento County Superior Court ruled against CPIL in its Public Records Act (PRA) suit against the Engineers' Board. In January 1991, CPIL intern Bill Braun filed a PRA request with the Board seeking copies of closed consumer complaints regarding the billing practices of professional engineers. The Board denied the request, citing Government Code section 6254(f), the "investigatory files" exemption to the PRA. In its lawsuit, CPIL questioned the applicability of this exemption to closed consumer complaints about billing disputes, since the Board disclaims jurisdiction over billing disputes and refuses to investigate them; in other words, it would never open an "investigatory file" on a complaint alleging a billing dispute because it maintains that such complaints are not within its disciplinary jurisdiction. In its decision, the court relied on a 1974 case in which an appellate court ruled that bare consumer complaints fall within the "investigatory files" exemption, without regard to whether an investigatory file is ever created. The court disagreed with CPIL's argument that the 1974 case should be overruled because the PRA has been significantly amended since then. The court also disagreed with CPIL's argument that PELS is a "law enforcement agency" under the Act, thus requiring it to make available records specified in section 6254(f)(2).

■ RECENT MEETINGS

At its January 14 meeting, the Board awarded contracts to CTB MacMillan/McGraw-Hill for testing services for PELS' geotechnical engineering examination from July 1, 1993 through June 30, 1995, and for PELS' professional land surveyor examinations effective May 1, 1993 through April 30, 1995.

At its January 29 meeting, PELS unanimously agreed to present outgoing Interim Executive Officer Curt Augustine with a resolution in appreciation of the outstanding work he performed for the Board since the resignation of Darlene

Stroup; the Board subsequently presented the resolution to Augustine at its April 23 meeting.

Also at its January 29 meeting, PELS unanimously agreed to allow first-time civil engineer applicants to apply for the October special civil examination and adopted the following policy. Applications for examination as a civil engineer will be evaluated for the October special civil examination and all portions of the civil engineering examination offered in April; applicants must postmark their applications by the final filing date published for the examination date for which they are applying; applications postmarked after that date will be evaluated for the next scheduled examination; and a fee of \$175 will be charged for any or all parts of the October special civil examination, and for any or all parts of the April civil engineering examination.

At its March 12 meeting, PELS unanimously decided that no postgraduate degree shall be given more than one year of experience credit, and that it shall not be allowed to cure a deficient undergraduate degree.

Also at its March meeting, the Board directed legal counsel to prepare an opinion on whether the definition of civil engineering, which includes appraisals and valuations, conflicts with the practice described in the Real Estate Appraisers Act. At PELS' April 23 meeting, Executive Officer Harold Turner reported on the legal opinion which was issued in response to the Board's inquiry. According to Turner, even though both Acts refer to appraisals, they are not in conflict; civil engineers do not have to be registered real estate appraisers in order to perform engineering appraisal functions, not must real estate appraisers be registered civil engineers to engage in their activities.

■ FUTURE MEETINGS

August 27 in Sacramento.
October 8 in Los Angeles.
November 19 in San Diego.

BOARD OF REGISTERED NURSING

Executive Officer: Catherine Puri
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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, certifies qualified nurse-midwifery applicants, establishes accreditation require-