

pervise practicing licensed veterinarians at horserace meetings, and to enforce CHRFB's rules and regulations relating to veterinary practices. As introduced March 2, this bill would require every veterinarian who treats a horse within a racing inclosure to report to the official veterinarian in a manner prescribed by him/her, in writing and on a form prescribed by CHRFB, the name of the horse treated, the name of the trainer of the horse, the time of treatment, any medication administered to the horse, and any other information requested by the official veterinarian. [S. Inactive File]

RECENT MEETINGS

At its November 18 meeting, BEVM discussed microchip technology, an identification system that is believed to benefit public animal shelters by reuniting lost pets with their owners. Although there are numerous other methods of identification such as tattoos and tags, such methods are considered to be less effective. Following discussion, BEVM unanimously agreed that microchip implantation is not a surgical procedure which only a veterinarian may perform, but should be performed under the direct supervision of a licensed veterinarian.

Also at its November meeting, BEVM reviewed a Department of Consumer Affairs (DCA) legal opinion on the lien and abandonment laws affecting the practice of veterinary medicine. DCA legal counsel Greg Gorges provided the Board with the following opinions:

- under Civil Code section 3051 *et seq.*, a veterinarian is authorized to hold an animal for payment after treatment is ended and payment for service is due;

- veterinarians appear to have a possessory lien for boarding and feeding an animal after it is ready to be claimed by the owner and during the statutory lien period; and

- a veterinarian is permitted to destroy an animal which has been abandoned if the veterinarian follows the procedures set forth in Civil Code section 1834.5.

FUTURE MEETINGS

March 10-11 in Davis.
 May 12-13 in Sacramento.
 July 7-8 in Sacramento.
 September 15-16 in San Diego.
 November 17-18 in Sacramento.

BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

*Executive Officer: Billie Haynes
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As its name suggests, the Board of Vocational Nurse and Psychiatric Technician Examiners (VNPTE) regulates two professions: licensed vocational nurses and psychiatric technicians. Its general purpose is to administer and enforce the provisions of Chapters 6.5 and 10, Division 2, of the Business and Professions Code. A licensed practitioner is referred to as either an "LVN" or a "psych tech."

The Board consists of five public members, three LVNs, two psych techs, and one LVN or registered nurse (RN) with an administrative or teaching background. At least one of the Board's LVNs must have had at least three years' experience working in skilled nursing facilities.

The Board's authority vests under the Department of Consumer Affairs (DCA) as an arm of the executive branch. It licenses prospective practitioners, conducts and sets standards for licensing examinations, investigates complaints against licensees, and may revoke, suspend, and reinstate licenses. The Board is authorized to adopt regulations, which are codified in Division 25, Title 16 of the California Code of Regulations (CCR). The Board currently regulates 64,724 LVNs with active or inactive licenses, and 30,992 LVNs with delinquent active licenses, for a total LVN population of 95,716. The Board's psych tech population includes 13,278 with active or inactive licenses and 5,964 with delinquent active licenses, for a total of 19,242 psych tech practitioners. Inactive licensees include those who have paid their license fees but have not yet completed thirty units of continuing education within two years of reactivation.

On November 17, the Board unanimously selected Teresa Bello-Jones, RN, JD, as its new Executive Officer, effective January 3. Bello-Jones has served as the Board's Supervising Nursing Education Consultant for eight years, and has experience as a public health nurse, assistant clinical professor at UC San Francisco, and consultant for the World Health Organization. At this writing, retiring Executive Officer Billie Haynes is expected to leave her post on January 14.

MAJOR PROJECTS

Legislative Oversight Hearing. On

November 10, VNPTE and the Board of Registered Nursing (BRN) presented testimony to the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale, on several issues related to the possible restructuring of the boards. Specifically, the Subcommittee requested comments on (1) whether licensed vocational nurses, psychiatric technicians, and registered nurses should be deregulated and both boards abolished; (2) whether the two boards should be merged; and (3) whether either or both boards should be transformed into bureaus which lack a multi-member policymaking board and operate under the direct control of the Director of the Department of Consumer Affairs (DCA).

Testifying on behalf of VNPTE, Executive Officer Billie Haynes stated that she would not recommend deregulation and/or elimination of the Board. Haynes noted that the merger issue has surfaced periodically during the past fifteen years; she stated she does not favor merger because of the sheer volume of licensees (approximately 377,000) who would then be regulated by one board. Haynes noted that she fully supports regular "sunset" review based upon specified criteria, to ensure that regulatory agencies are accountable to the legislature and to the public. As an alternative to a merger of BRN and VNPTE, Haynes stated her preference for a "horizontal" merger of all state programs which regulate RNs, LVNs, certified nurse assistants, and home health aides into a new "Division of Nursing." Haynes suggested that this arrangement would promote consumer protection by providing a centralized location for complaints and consumer direction about nursing in general.

LVN and psych tech professional groups also testified in opposition to the merger proposal. They argued that RNs outnumber LVNs and psych techs by approximately two to one, and suggested that a merged board dominated by RNs would place a lower priority on LVN/psych tech licensing, testing, and enforcement. These groups also stated that such RN domination would jeopardize the economic status of LVNs and psych techs in the health care industry.

Center for Public Interest Law Supervising Attorney Julianne D'Angelo testified that both boards are quite large (BRN has nine members and VNPTE has thirteen members), well-run, and tend to be driven by well-organized staff, such that they could and should be merged into one agency run by a smaller board dominated by public members. Approximately 40





states have merged their RN and LVN boards. Short of complete merger, D'Angelo urged that the boards be merged in some way so as to enable them to achieve economies of scale by combining certain functions, such as examination administration, complaint intake, and enforcement. Additionally, VNPTE licensees should be able to participate in BRN's diversion program, which D'Angelo stated is one of the most consumer-protective diversion programs in the Department of Consumer Affairs because it automatically suspends the license of an impaired licensee until the licensee is deemed able to practice safely.

At this writing, the Subcommittee is expected to release a final report on the hearings and its legislative recommendations in early 1994.

Computer Adaptive Testing. On October 25, the Board of Directors of the National Council of State Boards of Nursing, which oversees LVN and RN exams nationwide, informed all member boards of its decision to proceed with implementation of computer adaptive testing on April 1, in lieu of "paper and pencil" tests. [13:4 CRLR 94; 13:2&3 CRLR 115] National examination fees, paid to test administrator Educational Testing Service, will increase from \$40 to \$88. According to Executive Officer Haynes, the new testing procedures will allow successful applicants to practice sooner because test results will be released within three weeks of the exam. Moreover, tests may be scheduled year-round at locations selected by the applicant. In late November, the Board distributed a fact sheet which provides information on eligibility, registration procedures, Board and exam fees, filing dates, and exam locations to all vocational nursing schools and interested parties.

Completion of Psych Tech Occupational Analysis. At the Board's November 19 meeting, Executive Officer Haynes announced that the Board's ongoing occupational analysis of the psychiatric technician category has been completed and will result in a revised licensing examination. The analysis was performed by DCA's Central Testing Unit (CTU) to determine the validity of the California Psychiatric Technician Licensure Examination. CTU interviewed psych techs to identify the tasks of each job category and the knowledge, skills, and abilities required to complete each task. After the Board distributed a questionnaire to 2,000 entry-level practitioners and 50 supervisors, a panel of subject matter experts, supervisors, educators, and individuals from the Board's exam vendor (CTB MacMillan/McGraw-

Hill) met to evaluate the responses and the proposed components of a new test plan. [13:2&3 CRLR 115; 12:4 CRLR 133] At this writing, the proposed test plan will be submitted to the Board at its January 14 meeting in Sacramento. Because the pool of psych tech exam applicants decreased by 100 this year, the Board also voted unanimously to appoint a short-term task force of volunteers in 1994 to research the future role of psych techs in health care.

LEGISLATION

Future Legislation. During 1994, the Board plans to sponsor four legislative proposals in the DCA omnibus bill. Specifically, the Board's proposals would:

- amend Business and Professions Code section 2848 to delete an existing requirement that the Board meet "at least once every three months";

- repeal section 2869, which requires the Board to publish notice of exam dates in "two or more newspapers of general circulation" (the Board publishes these dates in exam packets);

- repeal section 2896, which creates a nursing manpower development program; funding for this program was effectively scrapped after passage of Proposition 13; and

- amend section 2873.5 to allow for licensing of military personnel with twelve months of patient care experience and basic course instruction in nursing, and whose "general discharge" has been under honorable conditions.

AB 1807 (Bronshvag), as amended September 8, would authorize the issuance of a temporary certificate to practice as a psych tech under prescribed circumstances, including payment of a fee. This bill would add the knowing failure to protect patients by following specified infection control guidelines to the list of actions that constitute unprofessional conduct for a psych tech. This bill would also prohibit the Board from maintaining a reserve fund greater than three months of the appropriated operating expenditures for any fiscal year. [A. Inactive File]

SB 993 (Kelley), as introduced March 5, would require all legislation becoming effective after January 1, 1995, which either provides for the creation of new categories of health professionals who were not required to be licensed before January 1, 1994, or revises the scope of practice of an existing category of health professional, to be supported by expert data, facts, and studies. [S. B&P]

LITIGATION

After conducting a hearing at its May meeting, the Board ratified a staff recom-

mendation to revoke the accreditation of Pacific Coast College in Encino, which is owned and operated by Chapter 11 debtor United Education and Software (UES). Violations identified by staff included lack of opportunity for students to make up missed theory and clinical hours; insufficient faculty; and non-availability of appropriate and current textbooks. [13:2&3 CRLR 115] UES subsequently filed suit against the Board and obtained a stay of the revocation pending the outcome of a hearing on its petition for writ of mandate. In its petition, UES alleged that the Board failed to give adequate notice of the violations prior to the revocation hearing; the evidence supporting revocation was insufficient; and the Board abused its discretion because it did not prepare findings in support of its decision and relied instead on staff reports. At an October 22 hearing in *United Education and Software v. Board of Vocational Nurse and Psychiatric Technician Examiners*, No. 533918, Sacramento County Superior Court Judge Michael T. Garcia ruled that the Board failed to set forth findings "to bridge the analytic gap between the evidence and the Board's ultimate decision" to revoke accreditation. The court issued a writ of mandate requiring the Board to make findings based upon the existing record or to hold a new hearing and make appropriate findings; the court also denied UES' request for attorneys' fees.

RECENT MEETINGS

At the Board's November 19 meeting, Executive Officer Haynes announced that the passage of SB 574 (Boatwright) (Chapter 1264, Statutes of 1993) will result in a new psych tech fee schedule effective January 1. The application fee will increase from \$25 to \$50; the re-exam fee will increase from \$35 to \$50; the initial license and biannual renewal fee will increase from \$90 to \$160; the delinquent renewal fee will increase from \$45 to \$80; the duplicate license fee will increase from \$2 to \$20; and the endorsement fee will increase from \$2 to \$20. The fee increases are necessary to accommodate escalating administrative and enforcement costs.

Also on November 19, the Board acknowledged its receipt of a petition from several licensees requesting it to interpret the scope of LVN practice to include the changing of the outer cannula of a patient's tracheotomy tube. Petitioners allege that insurance carriers are authorizing payment for LVN services for extended care patients who are ventilator-dependent, and argue that the Board's current interpretation does not reflect practice in the home care setting and does not corre-



late with patients' needs. The Board unanimously referred the petition to its Education and Practice Committee for review in 1994.

The Board also approved a proposal to review the impact of the North American Free Trade Agreement (NAFTA) on the LVN and psych tech professions in California. The Board will review its current regulations to determine if there are any artificial barriers to Mexican or Canadian professionals who wish to practice in California; evaluate its present procedures and policies for processing foreign transcripts; and form an ad hoc committee of psych tech, LVN, and BRN staff to research NAFTA's impact on disciplinary procedures.

■ FUTURE MEETINGS

May 19-20 in Sacramento.
September 15-16 in San Diego.
November 17-18 in Los Angeles.



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department established in 1955 (section 22 of Article XX, California Constitution). The Alcoholic Beverage Control Act, Business and Professions Code sections 23000 *et seq.*, vests the Department with the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC also has the exclusive authority to issue, deny, suspend, and revoke alcoholic beverage licenses. Approximately 77,000 retail licensees operate under this authority. ABC's regulations are codified in Divisions 1 and 1.1, Title 4 of the California Code of Regulations (CCR). ABC's decisions are appealable to the Alcoholic Beverage Control Appeals Board. Further, ABC has the power to investigate violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in liquor industry trade publications such as the *Beverage Bulletin* and *Beverage Industry News*.

The Director of ABC is appointed by, and serves at the pleasure of, the Governor. ABC divides the state into two divisions (northern and southern) with assistant directors in charge of each division. The state is further subdivided into 21 districts, with two districts maintaining branch offices.

ABC dispenses various types of licenses. "On-sale" refers to a license to sell alcoholic beverages which will be bought and consumed on the same premises. "Off-sale" means that the licensee sells alcoholic beverages which will not be consumed on the premises. Population-

based quotas determine the number of general liquor licenses issued each year per county. No such state restrictions apply to beer and wine licenses.

■ MAJOR PROJECTS

Retailers Fight Local Governments' Use of Conditional Use Permits to Regulate Liquor Stores in High-Crime Areas. In an attempt to decrease criminal activity, many local governments have begun to aggressively regulate the activities of liquor retailers through conditional use permit ordinances; some local governments are also requiring retailers to finance and implement crime reduction programs in their communities. The City of Oakland has one of the most controversial conditional use permit ordinances; the law makes the presence of crime-related activities—such as assaults, drug activities, loitering, and graffiti—on the premises of a liquor store *prima facie* grounds for revoking a retailer's land use permit. Affected retailers in Oakland must also pay a \$600 annual fee to support the Oakland alcohol beverage control operation, and a \$200 reinspection fee each time violations are found.

Oakland's ordinance has been—at least temporarily—successfully challenged in Alameda County Superior Court by the California Beverage Retailer Coalition, a newly formed coalition of trade groups including the California Beverage Merchants Association, the California Package Stores and Tavern Owners Association, the California Grocers Association, the California Association of Neighborhood Stores, the California Beer and Wine Wholesalers Association, and many other retail associations and individual retailers (see LITIGATION). The coalition was formed on September 17 as a group "dedicated to the development of consistent and nondiscriminatory local alcohol beverage sales regulations throughout California." The first priority of the coalition is to support local merchants against what it considers discriminatory conditional use permits, and its ultimate goal is to develop a uniform, statewide system of alcoholic beverage license conditions to be enforced by ABC in a nondiscriminatory fashion.

Opposing the retailers' coalition are the League of California Cities, the Coali-