deemed to have satisfied the examination requirement, appearing to open the door for the same kind of inconsistent decision-making on exam waivers which led CPIL to petition SPAEC to adopt the criteria. SPAEC adopted DCA's suggestions and has submitted the rulemaking record on the proposed change to OAL for review, where it is pending at this writing.

Ad Hoc Committee to Investigate Invasive Procedures. After a lengthy discussion at its June 25 meeting, the Committee agreed to form a six-member Ad Hoc Committee to investigate invasive procedures not presently covered by statutes setting forth the scope of practice of either speech-language pathologists or audiologists. These procedures include endoscopy, both nasal and oral, for speech-language pathologists, and cerumen management for audiologists. SPAEC members Gail Hubbard, Dr. David Alessi, and Jacqueline Graham will serve on the Ad Hoc Committee, and the other three members will be recruited from outside SPAEC. The Ad Hoc Committee will gather information and report back to SPAEC at a future meeting.

LEGISLATION

SB 916 (Presley), as amended September 8, is a wide-ranging bill affecting the Medical Board of California (MBC) which—among other things—abolishes the Board's Division of Allied Health Professions, under whose jurisdiction SPAEC currently functions. (*See* RECENT MEETINGS; *see also* agency report on MBC for a complete description of SB 916.) This bill was signed by the Governor on October 11 (Chapter 1267, Statutes of 1993).

SB 842 (Presley), as amended July 14, permits SPAEC to issue interim orders of suspension and other license restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 1807 (Bronshvag), as amended September 8, would require SPAEC licensees to notify the Committee of any change of address within thirty days and authorize SPAEC to establish by regulation a system for an inactive category of licensure. *[A. Inactive File]*

SB 595 (Rogers). Existing law permits physicians and audiologists to certify that a person is deaf or hearing impaired for purposes of receiving specialized or supplemental telephone equipment from telephone corporations regulated by the Public Utilities Commission. As amended April 19, this bill would permit such certification to be made by a hearing aid dispenser if a physician has evaluated the hearing of the applicant. *[S. E&PU]*

AB 1392 (Speier), as amended July 1, would require SPAEC to notify DCA whenever any complaint has gone thirty days without any investigative action, and would require the DCA Director to determine when a backlog of complaints justifies the use of DCA staff to assist in complaint investigation. *[S. B&P]*

SB 993 (Kelley), as introduced March 5, would state the intent of the legislature that all legislation becoming effective on or after January 1, 1995, which either provides for the creation 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. *[S. B&P]*

RECENT MEETINGS

At its June 25 meeting, SPAEC discussed its future in light of the probable July 1, 1994 abolition of MBC's Division of Allied Health Professions, due to a provision in SB 916 (Presley) (*see* LEGISLATION). DCA legal counsel Greg Gorges stated that the Committee has two options: remain under the jurisdiction of the Medical Board or become an independent board within DCA. If SPAEC chooses the latter option, it would need to secure DCA's assistance in sponsoring legislation removing it from the Medical Board and changing its name to "Board" rather than "Committee." SPAEC could continue to contract with MBC's enforcement program for the intake and investigation of its discipline cases, if it so desires. Following discussion, the Committee voted to begin the process of becoming an independent board within DCA. Subsequent to SPAEC's June 25 meeting, DCA amended its omnibus bill, AB 1807 (Bronshvag), to include language removing SPAEC and several other allied health licensing programs from DAHP and MBC; however, that language encountered opposition at the end of the legislative year and the bill stalled on the Assembly floor. Thus, SPAEC and DCA must resolve this issue during 1994.

Also on June 25, the Committee discussed whether a general law corporation may directly employ a speech-language pathologist to perform therapy services, or whether such therapy services must only be performed through a licensed speech-language pathology professional corporation. Greg Gorges opined that the relevant statutes are unclear, and do not expressly prohibit a general law corporation from employing a speech-language pathologist. Following discussion, SPAEC adopted the position that the laws are not clear enough to enable it to prohibit such direct employment of licensees by general law corporations; however, the Committee expressed concerns about the potential for fraud and abuse with the private hiring of licensees and warned that each licensee so hired is required to comply with all laws and regulations.

Also in June, Executive Officer Carol Richards suggested that SPAEC adopt a rule requiring licensees to include their license number in advertising and on reports. The Committee agreed to review a draft of such a rule at its next meeting.

FUTURE MEETINGS

January 7 in San Diego.
April 22 in Sacramento or Monterey.
July 22 in Irvine.
October 28 in San Francisco.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Interim 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.

At its September 8 meeting, BENHA welcomed four new members. Public member Madale Watson was recently appointed by Senator Roberti; Sheldon Blumenthal and Sister Siena Wald, both representing nonprofit nursing homes, and William Knell, representing a for-profit nursing home, were recently appointed by Governor Wilson. BENHA currently has one public member vacancy, which must be appointed by the Assembly Speaker.

Former Executive Officer Ray Nikkel resigned on September 20; Pamela Ramsey has been appointed to serve as Interim Executive Officer during the Board's search for a replacement.

MAJOR PROJECTS

Advocacy Group Releases 1992 California Nursing Home Report. In July, the California Advocates for Nursing Home Reform (CANHR), a nonprofit advocacy organization, issued its 1992 report on the overall status of nursing homes' treatment of their residents. The report gave California nursing homes a "D" grade for their quality of care and recognition of patients' rights, noting that while both California and the federal government have extensive laws and regulations with which nursing homes are required to comply, many facilities failed to meet those standards in 1992. Specifically, the report noted that in 1992, fourteen California nursing home residents died as a direct result of violations on the part of facilities; 379 residents were placed in imminent danger of death or serious bodily harm; and the health, safety, or security of 1,394 residents was jeopardized by nursing home violations. The report noted that California nursing homes received a total of 32,557 deficiency notices (issued when facilities fail to meet certain standards of care), averaging 26.7 deficiencies per facility, and were found to be out of compliance with federal laws at a rate 10–30% higher than the national average in key areas of care. For example, the report noted that 31.58% of California facilities were found deficient in recognizing residents' rights to be free from physical restraints, compared to a 17.44% deficiency rate in that area nationally.

The report also provided examples of the tragic human dimension of this serious regulatory failure: an 83-year-old resident was found lying in her own waste (the facility was fined $500); an 82-year-old female resident was sexually abused by a male aide (the facility received a $1,000 fine); one resident had to call 911 herself after the facility ignored her difficulty in breathing, then died at a hospital shortly thereafter (the facility was fined $600). The report further noted that hundreds of other residents were physically or sexually abused, dehydrated, given inappropriate medication, restrained for hours, days, or months at a time, forced to lie in their own feces and urine, or simply neglected.

The report gave California nursing homes an "F" grade for staffing, noting the high turnover rate—88.9% annual average—and minimal staffing. Noting that the state has no mandated staff-to-patient ratio, the report stated that a certified nurse assistant can be required to care for up to twenty residents during a shift. CANHR concluded that the high turnover and short staffing factors have resulted in one of the highest levels of stress-related illnesses for any profession in the country, which in turn results in incidents of neglect and verbal/physical abuse of residents.

The report gave the state a "C-" grade for enforcement of state and federal laws and regulations pertaining to the nursing home industry. The report noted that the Department of Health Services' Licensing and Certification Division is responsible for ensuring compliance with state and federal laws and regulations, but that Governor Wilson's failure to promptly implement federal nursing home laws, together with a $3 million budget cut which eliminated nursing home licensing inspections in 1992, have undermined the Division's ability to enforce the laws. As a result of these problems, the Division was unable to respond to complaints regarding patient care, neglect and abuse in a timely manner; some of these complaints were not investigated at all. The report also indicates that enforcement and implementation of state and federal laws is inconsistent in various parts of the state.

The report gave the state's for-profit nursing home industry a "D" grade. Significantly, CANHR stated that the California Association of Health Facilities spends tens of thousands of dollars each year on political contributions and lobbying efforts aimed at neutralizing current regulatory and enforcement statutes and attempting to defeat legislation that would provide more protection to nursing home residents. In the report, CANHR contended that instead of censuring substandard facilities, the industry routinely defends its abuses on the basis of inadequate funding, despite a 20% increase in Medi-Cal reimbursements over the past four years.

CANHR offered a number of suggestions for improving the quality of care in state's nursing homes, including the development of community-based nonprofit facilities through local, state, and federal revolving loan funds; the establishment of a minimum staff-to-patient ratio; the imposition of standard, uniform training at state-approved institutions for all CNAs prior to employment, which includes a system of tracking employees with criminal backgrounds; amendment of the Patients' Right of Private Action, Health and Safety Code section 1430(b), to allow residents to receive unlimited damages, rather than limiting them to $500; and an increase in penalties for all classes of citations, including "AA" violations (which estimates the worth of a resident's life to be $25,000 maximum), and the elimination of the waiver of penalties for Class "B" violations.

CANHR's report points out that nursing home residents and their families are not the only ones who are affected by the poor quality of care: state taxpayers spent over $1.7 billion in Medi-Cal money on nursing home reimbursements in 1992, and they spend even more when nursing home residents are sent to acute care hospitals suffering from dehydration due to lack of water or overdrugging, and when bedsores are allowed to progress to the point where limbs must be amputated.

BENHA Enforcement Statistics. BENHA recently released its enforcement statistics for the past few months, which appear to reflect the failure of the state's regulatory system documented in the report described above. From April 1 to August 31, the Department of Health Services (DHS) referred to BENHA two citations for "AA" violations, and 126 citations for "A" violations. Violations designated as "AA" are facility violations of standards which lead to a patient's death; "A" violations are those that seriously endanger a patient's safety with a substantial probability of death or serious bodily harm. During those five months, BENHA conducted eight informal telephone counseling sessions and two formal telephone counseling sessions, issued two letters of warning and thirteen Medicare letters, and requested accusations against the licenses of two NHAs.

In July, BENHA published its list of NHAs whose licenses are suspended or revoked or who were placed on probation through June 30. The list indicates that six NHAs are currently on probation. The list also indicates that, between July 1, 1990 and June 30, 1993, four licensees surrendered their licenses, and four had their licenses revoked. BENHA is required to publish information concerning the status

of NHAs pursuant to AB 1834 (Connelly) (Chapter 816, Statutes of 1987). As part of its implementation of AB 1834, every six months BENHA provides DHS with a list of all NHAs who have had their licenses revoked, suspended, or placed on probation during the last three years. In return, DHS provides BENHA with copies of enforcement actions initiated against facilities, including facility license revocation actions, final involuntary decertifications from the Medicare/Medi-Cal programs, and all class "AA" and "A" citations issued after July 1, 1988.

LEGISLATION

SB 842 (Presley), as amended July 14, permits BENHA to issue interim orders of suspension and other license restrictions against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

SB 432 (Greene) provides that any order for a controlled substance classified in Schedule II 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 prescription. This bill also provides that a skilled nursing facility, intermediate care facility, or licensed home health agency providing hospice care shall 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 July 30 (Chapter 245, Statutes of 1993).

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 September 8, this bill would instead provide 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 would also require 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. *[A. Inactive File]*

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 the state Department of Health Services 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

Department of Consumer Affairs (DCA) Director Jim Conran made a brief appearance at the Board's September 8 meeting, during which he expressed disappointment with BENHA, citing its failure to aggressively discipline the administrators whom it is charged with overseeing. He stated that DCA wants "world-class consumer protection" and offered the Department's support toward the attainment of that goal. (*See* agency report on DCA for related discussion.) Conran further stated that he sees a need for an aggressive and visible BENHA, and warned that if the Board is unable to rise to the challenges with which it is faced, DCA will support its abolition.

Also at its September 8 meeting, the Board discussed its administrator-in-training (AIT) program. In order to qualify for the NHA exam, applicants must have either a master's degree in nursing home administration (or related health administration field) or complete an AIT program of at least 1,000 hours and satisfy some combination of work experience and educational requirements; the AIT program requires a minimum of twenty hours per week of supervised training and work experience in a nursing home. One Board member inquired whether the twenty hour per week minimum requirement of the AIT program might not have the effect of excluding some otherwise qualified and desirable potential applicants from the profession. It was pointed out that many registered nurses find it difficult or impossible to hold a full-time job and meet the weekly time requirement. The Board member suggested that the minimum weekly hour requirement of the AIT program be reduced, perhaps allowing the program to be completed in two years rather than one. Then-Executive Officer Ray Nikkel agreed that the present licensing requirements might have the effect of excluding desirable applicants but cautioned that any attempts to change the licensure requirements would be strenuously opposed by the industry.

At the same meeting, BENHA discussed the quality of the American College of Healthcare Administrators' (ACHA) AIT evaluation program; in 1985, ACHA volunteered to take on the task of evaluating participants in the AIT program. While the goal is to have all AIT participants evaluated, presently only 51% of participants are being evaluated. One Board member questioned the quality of those evaluations which are being made, claiming that an evaluation which took place at his facility lacked substantive merit. Executive Officer Nikkel noted that ACHA's officials are aware of the problems with its evaluation program and are working hard to address those deficiencies; Nikkel also noted that, prior to 1985, there was no visitation program at all. One Board member commented that perhaps BENHA should not rely on volunteers to perform this function, if it is critical to have all participants visited and evaluated.

Also at the September 8 meeting, the Board discussed its disciplinary process. The Board noted that generally, if three "A" citations (violations which seriously endanger a patient's safety with a substantial probability of death or serious bodily harm) are issued to the same facility over a five-year period, remedial measures are initiated, usually in the form of a letter of warning. More than three citations against a facility in that time period might result in a telephone counselling session between the Board's Executive Officer and the licensed administrator of the facility. Ray Nikkel noted that continued citations against an administrator's facility may result in disciplinary action such as probation, suspension, or revocation of an administrator's license. Nikkel explained that BENHA is required to initiate remedial and/or disciplinary action when there is evidence of a pattern of poor performance of the duties for which a license is issued by the Board.

Board member Dr. Orrin Cook explained that the "A" and "AA" citations in question are issued by DHS to the facility, not the administrator; if an administrator is accused of malfeasance or gross negligence, BENHA is responsible for handling those accusations directly. Another Board member asked whether the administrator should perhaps be accountable for "A" citations issued against a facility, and

speculated that it might be too easy for facility administrators to shift responsibility for hazardous conditions to other employees; Executive Officer Nikkel responded that this reaction is not uncommon.

Also at the September 8 meeting, the Board elected Dr. Orrin Cook to serve as Vice-Chair; Nancy Campbell is the current Chair of BENHA.

FUTURE MEETINGS

December 14 in San Francisco.

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.

MAJOR PROJECTS

Board Holds Hearing on Proposed Regulatory Changes. At its May 20–21 meeting, the Board conducted a regulatory hearing on its proposal to amend sections 1502 (delegation of functions), 1510 (professional inefficiency), and 1535 (examination results), and to adopt new section 1566 (release of prescriptions: notice required), Division 15, Title 16 of the CCR. *[13:2&3 CRLR 99]*

• Amendments to section 1502 would delegate and confer 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 to the Board. The Board received no public comment regarding this amendment and unanimously adopted it; this change awaits review and approval by the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL).

• Amendments to section 1510 would have provided that—among other things—inefficiency in the optometric profession includes the failure to inform any patient for whom treatment is prescribed, in terms understandable to that patient (or legal guardian, if appropriate), of the risks and benefits of the treatment. The California Optometric Association (COA) opposed the proposed changes to section 1510, contending that the requirement would be unfair to optometrists since other healing arts practitioners are not under a similar mandate. This position was echoed by UC Berkeley School of Optometry Dean Anthony Adams, OD, who opined that "[t]o single out a profession's *detailed* obligations to a patient appears to be not only unnecessary but also to imply some specific past indiscretions unique to optometry" (emphasis original). Adams also claimed that the proposed disclosure requirement "neither informs the public nor protects it" and urged that the language "not be adopted until general and appropriate language is adopted simultaneously by all health care professions." Following discussion, the Board unanimously rejected the proposed changes to section 1510.

• Amendments to section 1535 would have provided that applicants for licensure must successfully complete the National Board Exam, the Board's practical exam, and the Board's law exam, and that applicants may fulfill these requirements in any sequence; however, the amendments would provide that in no case shall the total period in which the requirements are met exceed five years. COA objected to this proposal, opining that by allowing applicants to sit for the Board exam without first passing the National Board Exam, the Board could possibly be admitting candidates who have not proved academic competency. Following discussion, the Board unanimously rejected the proposed changes to section 1535.

• Proposed new section 1566 would require 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. Optometrists are legally required to release spectacle lens prescriptions to patients upon request, but are not required to release contact lens prescriptions. According to Executive Officer Karen Ollinger, the Board receives approximately five consumer complaints every day indicating problems in optometrist-patient communication; this regulatory proposal attempts to address at least some of these communication problems by requiring optometrists to notify consumers regarding their policy on the release of prescriptions. Again, COA opposed this disclosure proposal, contending that the disclosure requirement would be "overly burdensome" and complaining that no other profession has such a requirement (although physicians routinely hand patients their prescriptions, enabling patients to fill their prescriptions at the pharmacy of their choice). Department of Consumer Affairs (DCA) legal counsel Robert Miller suggested that the proposed language be modified to provide that the notice shall, at minimum, contain the specified information; this would provide optometrists with the discretion to add information to the notice as they see fit. Even as modified, the regulation continues to allow optometrists to release contact lens prescriptions at their own discretion. Following discussion, the Board adopted the modified version of proposed section 1566 by a 6–2 vote; optometrists Pamela Miller and Thomas Nagy opposed the motion. At this writing, the modified language has not yet been released for an additional fifteen-day public comment period; the proposal also awaits review and approval by DCA and OAL.

New Law Book Completed. The Board recently released *Laws Relating to the Practice of Optometry*, which contains up-to-date provisions relating to the practice of optometry and the functioning of the Board from the Business and Professions Code, the Government Code, the Corporations Code, and the Health and Safety Code, as well as the California Code of Regulations and Federal Trade Commission rulings. The book is available from the Board for $10.

Consumer Education Pamphlet Now Available. The Board's Public Relations and Consumer Education Committee is now distributing a consumer education pamphlet to consumer organizations, senior centers, consumers who file complaints about optometrists, and other consumers upon request. The pamphlet includes an explanation of the relative responsibilities of various eye care professionals and also describes how optometrists may be disciplined. *[13:1 CRLR 59]*

Final Report on UCLA Optometry Refresher Course Completed. On June 28, Feelie Lee, Ph.D., submitted the final report on the UCLA Extension Optometry Review Course; the final segment of this optometry refresher course, designed by the Board in conjunction with UCLA, concluded in April. *[13:2&3 CRLR 99; 13:1 CRLR 60; 12:4 CRLR 114]*

In 1990, the legislature required the Board to spend $300,000 from its special fund to finance the development of the refresher course, primarily as a way to assist foreign-trained optometrists to become licensed in California. The Board was required to fund the course because it has never approved a "remedial" or "refresher" course for foreign-trained optometrists. Instead, it reviews applications