



## REGULATORY AGENCY ACTION

(See CRLR Vol. 11, No. 1 (Winter 1991) pp. 89-90; Vol. 10, No. 4 (Fall 1990) p. 108; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 127 for background information on this issue.) This two-year bill is pending in the Assembly Agriculture Committee. The Board has postponed work on this bill pending a Department-wide study of mandatory CE currently being conducted by DCA.

### LITIGATION:

In *Hall v. Kelley*, No. G009476 (Fourth District Court of Appeal), Dr. Linda Hall, who suffers from dyslexia, has appealed the Orange County Superior Court's dismissal of her lawsuit against BEVM for its alleged failure to provide her with an adequate setting to take the practical exam. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 113; Vol. 11, No. 2 (Spring 1991) p. 109; and Vol. 11, No. 1 (Winter 1991) p. 91 for extensive background information.) Dr. Hall seeks a ruling that she adequately alleged causes of action against BEVM for violation of her statutory rights under 29 U.S.C. section 794, Government Code sections 11135 and 12946, and her rights to due process and equal protection under the U.S. Constitution. Alternately, Dr. Hall seeks leave to re-amend her amended complaint to correct any deficiencies the court may find. The Court of Appeal heard oral argument on September 19; no decision has yet been issued.

### RECENT MEETINGS:

At its October meeting, BEVM discussed complaints regarding misleading telephone directory advertisements for veterinary services. Section 2030.5, Title 16 of the CCR, requires advertisements for emergency veterinary hospitals to list hospital hours and the availability of a veterinarian to provide emergency service. The Board examined several advertisements and concluded that, although they technically comply with section 2030.5, they are misleading. BEVM decided to inform telephone directory publishers of its advertising requirements, but to take no further action until actual violations of section 2030.5 occur.

At its November meeting, the Board discussed the parameters of its re-examination policy. Department of Consumer Affairs legal counsel Greg Gorges advised the Board that, pursuant to its penalty guidelines, the Board may re-examine a veterinarian whose license was revoked for negligence or incompetence in general areas of expertise, rather than the veterinarian's specific area of expertise, and may require the

veterinarian to take the Clinical Proficiency Exam (CPE) as a condition of reinstatement. Gorges further advised that the Board may require a graduate of a non-approved veterinary school to pass the CPE in order to qualify for the California Reciprocity Examination.

### FUTURE MEETINGS:

May 7-8 in Sacramento.  
July 9-10 in Sacramento.  
September 10-11 in Sacramento.  
November 12-13 in Sacramento.

### BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS

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This agency regulates two professions: 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 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, and has the authority to grant adjudicatory hearings. Certain provisions allow the Board to revoke or 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 57,677 LVNs with active licenses, 31,836 LVNs with delinquent active licenses, and 12,163 with inactive licenses, for a total LVN population of 101,616. The Board's psych tech population includes 13,519 with active licenses and 5,014 with delinquent active licenses, for a total of 18,533 psych tech practitioners.

### MAJOR PROJECTS:

*Regulatory Action on Accreditation Procedures.* At its November 15 meeting, the Board took action on amendments to several sections of Division 25, Title 16 of the CCR, which concern the accreditation of LVN and psych tech

education and training programs. Originally the subject of public hearings in March, some of these amendments were adopted at a hearing in September. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 117 and Vol. 11, No. 2 (Spring 1991) pp. 110-11 for background information.) The Board adopted or reconfirmed adoption of the following regulatory changes on November 15:

-amendments to sections 2526 and 2581, to specify the written documentation which must be submitted to the Board by a facility's director in connection with the application for accreditation;

-amendments to sections 2527 and 2582, to state that any material misrepresentation of fact in any report required by the Board is cause for revocation of accreditation;

-amendments to sections 2529 and 2584, to specify the requirements for enumerated faculty positions for LVN and psych tech programs; and

-amendments to sections 2530 and 2585, to require programs to have sufficient faculty, clinical facilities, library, staff, support services, physical space, and equipment to achieve the program's objectives. The revision also specifies that only one teacher assistant may be assigned to each instructor, each instructor must have a daily lesson plan correlating theory and practice, and each school must have on file proof that each student has completed education through the twelfth grade or the equivalent.

These amendments were submitted to DCA for approval on December 17. The Board anticipated forwarding them to the Office of Administrative Law (OAL) for approval by mid-January.

*Amendments to Curriculum Regulations.* After deferring action at its March and September meetings, the Board amended regulatory sections 2533 and 2587, which specify required curriculum content for LVN and psych tech programs, at its November meeting. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 117; Vol. 11, No. 2 (Spring 1991) p. 110; and Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) The amendments require content on communicable diseases (including AIDS) and specify that all curricular changes which alter the program's philosophy, conceptual framework, content, or objectives must be approved in advance by the Board. These amendments await DCA and OAL approval.

*Intravenous Therapy for LVNs.* At its November 15 meeting, the Board amended regulatory section 2542 and reconfirmed its adoption of sections 2542.1 and 2542.3, which expand the



LVN scope of practice to allow LVNs who are intravenous therapy certified to start and superimpose intravenous fluids via secondary infusion lines. The Board also reconfirmed its amendments to sections 2547, 2547.1, and 2547.3, which expand the LVN scope of practice to permit LVNs who are intravenous therapy and blood withdrawal certified to start and superimpose intravenous fluids via secondary infusion lines. The content required for Board approval of courses in intravenous therapy and blood withdrawal includes universal precautions for infection control. These changes were the subject of a public hearing in March, and were originally adopted by the Board in September. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 117; Vol. 11, No. 2 (Spring 1991) p. 111; and Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) The rulemaking file on these proposed changes awaits DCA and OAL approval.

**Regulatory Action on Psych Tech Continuing Education.** Also at its November 15 meeting, the Board reconfirmed its adoption of regulatory sections 2592.1 and 2592.6, and adopted sections 2592.2-2592.5 and 2592.7, which specify psych tech continuing education (CE) requirements. All of these sections were the subject of a public hearing in March, and sections 2592.2-.5 and 2592.7 were originally adopted by the Board in September. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 117; Vol. 11, No. 2 (Spring 1991) p. 111; and Vol. 11, No. 1 (Winter 1991) p. 92 for background information.) These changes also await DCA and OAL approval.

Also awaiting approval are the Board's amendments to sections 2590 and 2590.1, adopted on September 11, which convert psych tech licensees to a biennial renewal fee of \$90 and set the fee for Board approval of a CE provider at \$150 every two years.

**LVN Regulatory Action Proposed.** At its November meeting, the Board accepted the Education and Practice Committee's proposals for regulatory action. Under one proposal, applicable to military and civilian equivalency applicants, the Board will draft regulatory language to make both full-time and part-time paid patient care experience acceptable for licensure eligibility. Under the second proposal, the Board will seek to adopt the following regulatory language as alternative means by which licensees may meet the twelfth grade or equivalent educational requirement mandated by AB 3306 (Lancaster) (Chapter 520, Statutes of 1990):

-documentation from an evaluation service that foreign applicants have successfully completed thirty units of college credit in their country;

-a degree from an accredited college or university;

-completion of fifteen units from an accredited college in the United States; -successful completion of the California High School Proficiency Examination; or

-successful completion of the General Education Development (GED) examination.

At this writing, these proposed changes have not yet been published in the *California Regulatory Notice Register*.

**Board Clarifies LVN Scope of Practice.** At its November 15 meeting, the Board adopted the Education and Practice Committee's recommendations to limit the LVN scope of practice in the following ways:

-Intravenous certified LVNs may administer immune globulin (a blood product) intravenously.

-LVNs may not insert (Landmark) midline catheters.

-Intravenous and blood withdrawal certified LVNs who are dialysis trained in accredited, organized healthcare systems may access ("hook up") a subclavian catheter to a dialysis machine. The accredited, organized healthcare system is responsible for ensuring that the LVN has the knowledge, skill, and ability to safely perform the procedure.

-LVNs may perform that part of the triage process that includes observation and data collection. However, LVNs may not perform that part of the triage process that includes independent evaluation, interpretation of data, and determination of treatment priorities and levels of care.

-LVNs may prepare the label on pre-packaged medication only if the doctor or pharmacist checks the label before it is given to the patient.

-LVNs may not place and remove temporary sedative dressings in a dental extraction site.

-LVNs may not apply anesthetic jelly as lubricant for a nasogastric (NG) tube or nasopharyngeal airway; use of anesthetic jelly as a lubricant for insertion of an NG tube or nasopharyngeal airway may create a hazardous situation which could result in depression of the gag reflex and aspiration and trauma to the areas.

**Computer Testing.** The California Psychiatric Technician Computer Administered Testing Project (CAT) was implemented in April 1990. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 117; Vol.

11, No. 3 (Summer 1991) p. 113; and Vol. 11, No. 2 (Spring 1991) p. 111 for background information.) Since implementation, a total of 1,716 candidates have taken the examination at the Sacramento and Los Angeles test facilities; as of October 23, the passage rate for first-time examinees was 81.2%.

During August, CTB MacMillan/McGraw-Hill (CTB), the Board's exam contractor, installed in the Board's office the initial phases of a data base program to automate the scheduling of candidates for the psych tech exam. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 118-19 for background information.) Board staff is currently working with CTB on the new program to identify any problems.

**Discipline Statistics.** At the Board's November 15 meeting, Enforcement Officer Angelina Martin reported that from August 1991 through September 1991, five LVNs and two psych techs were disciplined for drug abuse; two LVNs and two psych techs were disciplined for unprofessional conduct; and two LVNs were disciplined for gross negligence.

#### LEGISLATION:

**SB 664 (Calderson)** would prohibit LVNs and psych techs, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This two-year bill is pending in the Senate Business and Professions Committee.

**Future Legislation.** At its November 15 meeting, the Board accepted the Enforcement Committee's proposal to seek legislation to add sections 3000-3000.15 and section 4550 to the Business and Professions Code, to establish a recovery program for LVNs and psych techs. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 118 for extensive background information on the proposed recovery program.) The program would (1) serve as a recovery program to which the Board may refer licensees, where appropriate, as an alternative to or in conjunction with other means of disciplinary action; and (2) be a confidential source of treatment for licensees who, on a strictly voluntary basis and without knowledge of the Board, desire to avail themselves of its services. The Board would contract with one or more assistance programs to administer its recovery program statewide, designate a program manager and employ staff to



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implement the program, and establish a Quality Assurance and Utilization Review Committee to provide clinical consultation and to review the activities of the assistance program. The Committee would consist of six persons appointed by the Board, including one public member of the Board; one physician, holding an active California license, who specializes in the diagnosis and treatment of addictive diseases or mental illness; one registered nurse, holding an active California license, who has demonstrated expertise in the field of chemical dependency or psychiatric nursing; one mental health provider, holding an active California license, who has demonstrated expertise in the field of chemical dependency or mental illness; and one LVN and one psych tech, holding active California licenses, who are in recovery.

An administrative fee, not to exceed the cost to provide the service, may be charged to each program participant; costs incurred for the examination and rehabilitation aspects of the program would be the responsibility of the applicant. All Board records and records of the assistance program pertaining to the treatment of licensees in the program would be kept confidential and would not be subject to discovery or subpoena.

The Board also accepted the Enforcement Committee's proposal to seek amendments to various LVN and psych tech statutes regarding causes for disciplinary action. For example, the Board may seek amendments to Business and Professions Code sections 2878 and 4521 to expand its authority to suspend or revoke a license or permit for unprofessional conduct, which would be defined to include the following:

- acts such as battery, assault, neglect, intimidation, cruel punishment, abandonment, use of a physical or chemical restraint, medication, or isolation without authorization or for a purpose other than as ordered;

- the deprivation of services necessary to avoid physical harm or suffering;

- the commission of any act of fiduciary abuse of a patient;

- the commission of any act of sexual abuse, misconduct, or relations with a patient;

- the administration of therapeutic agents, treatments, or activities in an inaccurate, unsafe, or negligent manner;

- the failure to record, or the inaccurate recording of, patient care data;

- the furnishing or prescribing of any dangerous drug or device, as defined in Business and Professions Code section

4211, or administration of such a dangerous drug or device except upon the prescription of a person legally authorized to prescribe such drug or device; or the furnishing or administration of any dangerous drug or device in any manner other than as prescribed by or contrary to a physician's orders;

- performing, or offering to perform, any professional service beyond the scope of the permit or license authorized by statute;

- performing, or offering to perform, professional services beyond the scope of one's professional competence, as established by education, training, and experience; and

- the failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

The Board may also seek to amend Business and Professions Code sections 2878.1 and 4521.1 to provide that, in addition to other grounds for discipline, the Board may suspend or revoke a license or permit for the following reasons:

- the commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the license;

- the commission of any act involving dishonesty when such action is substantially related to the duties and functions of the license;

- failure to comply with the child abuse reporting requirements of Penal Code section 11166;

- failure to comply with the dependent adult reporting requirements of Welfare and Institutions Code section 15630;

- failure to comply with the elder abuse reporting requirements of Welfare and Institutions Code section 9381; and

- misrepresenting professional credentials or licensure status.

Business and Professions Code sections 2878.5 and 4521.5 may be amended to provide that the use of any alcoholic beverage, controlled substance, or dangerous drug, to an extent or in a manner dangerous or injurious to oneself, constitutes grounds for discipline.

In addition, the Board may seek legislation to provide that the Board may deny any application or suspend or revoke any license or permit for any of the following:

- the denial of licensure, suspension or restriction, or voluntary surrender following the initiation of disciplinary action by another state or other government agency, of a license, registration,

permit, or certificate to practice as a health care professional; and

- the denial of licensure, suspension or restriction or voluntary surrender of a license or permit following the initiation of disciplinary action by another California health care professional licensing board.

The proposed legislation would also provide that the Board may issue an initial license on probation to any applicant who has violated any term of the relevant statutory authority, but who has met all other requirements for licensure and who has successfully completed the examination for licensure within four years of the date of issuance of the initial license.

Finally, the Board may seek statutory amendments authorizing it to require, as a term or condition upon reinstatement or reduction of penalty, that a petitioner take and successfully complete the current examination for the LVN or psych tech license.

### RECENT MEETINGS:

At the Board's November 15 meeting, the Education and Practice Committee announced its determination that the Vocational Nursing Practice Act does not permit LVNs to pare and freeze warts or pare superficial corns and callouses. In response, Dr. Joseph Hughes of the California Podiatric Medical Association addressed the Board and noted that because so many LVNs are responsible for elderly patients who require foot and nail care, the Board should initiate dialogue with the medical and nursing communities before determining the LVN scope of practice on foot and nail care issues. The Board referred these issues back to the Education and Practice Committee for reconsideration.

Also in November, Executive Officer Billie Haynes announced that Senator David Roberti has reappointed public member Manuel Val to the Board; his term will expire in June 1995.

### FUTURE MEETINGS:

May 7-8 in Sacramento.

September 10-11 in San Francisco.