



statement, and prohibits the licensee conducting those hearing screenings from making or seeking referrals for testing, fitting, or dispensing of hearing aids. This bill was signed by the Governor on August 30 (Chapter 573, Statutes of 1992).

AB 2743 (Frazee) renames SPAEC's enabling act as the Speech-Language Pathologists and Audiologists Licensure Act; provides that the delinquency fee shall be \$25, the fee for a duplicate wall certificate fee is \$25, and the duplicate renewal receipt fee is \$25; provides that all speech-language pathologist and audiologist licenses issued as of January 1, 1992, shall expire at midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed; provides that all other initial licenses issued by SPAEC will expire at midnight on the last day of the birth month of the licensee during the second year after it is issued; and provides that, to renew an unexpired license, the licensee must, on or before the date of expiration of the license, apply for renewal on a form provided by SPAEC, accompanied by the prescribed renewal fee. This bill was signed by the Governor on September 30 (Chapter 1289, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits speech-language pathologists and audiologists, 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, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill also makes it unlawful for any speech-language pathologist or audiologist to charge additional charges for any clinical laboratory service that is not actually rendered by that person to the patient and itemized in the charge, bill, or other solicitation of payment. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

SB 1119 (Presley), which would have required district attorneys, city attorneys, and other prosecuting agencies to notify SPAEC of the filing of felony charges against a licensee and required court clerks to transmit the record of any convictions of a licensee to SPAEC, died in committee.

■ FUTURE MEETINGS

January 15 in San Diego.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel (916) 920-6481

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.

The terms of Board members John Colen and Donald Henderson have expired and they have not been reappointed. At this writing, their replacements have not been named.

■ MAJOR PROJECTS

Nursing Home Reform Act Update. In February 1992, as a result of the settlement of litigation between the federal Health Care Financing Administration (HCFA) and California's Department of Health Services (DHS) regarding California's implementation of the federal Nursing Home Reform Act of 1987, HCFA published proposed rules im-

plementing the federal reforms in the *Federal Register* (57 Fed. Reg. 4516). Among other things, the proposed rules relate to the qualifications of nursing home administrators; if approved, California's NHA licensure requirements will have to be amended. [12:2&3 CRLR 128]

At BENHA's June 23 meeting, Executive Officer Ray Nikkel announced that the National Association of Boards of Examiners of Nursing Home Administrators (NAB) had submitted its comments to HCFA regarding the proposed rules; NAB representatives also met with HCFA officials to further discuss their concerns. Nikkel reported that HCFA is expected to implement most, if not all, of NAB's recommendations. Nikkel estimated that HCFA's revised regulations may be released in November; however, Nikkel does not anticipate the release of a final version until August 1993, which will provide BENHA with time to revise its existing regulations to conform with the final regulations.

RCFE Administrator Licensing/Certification Program Update. At its June 23 and August 28 meetings, BENHA continued its discussion regarding the possible redirection of responsibility for administering the residential care facility for the elderly (RCFE) administrator certification program from the Department of Social Services (DSS) to BENHA. [12:2&3 CRLR 129]

At the June 23 meeting, Nancy Campbell, chair of the BENHA subcommittee charged with identifying and analyzing pertinent areas of concern regarding the transfer of the RCFE program to BENHA, submitted a 33-page report addressing relevant issues. Among other things, the report describes the history of RCFE administrator certification; evaluates the concerns of both providers and consumers; proposes draft legislation necessary to transfer the program's jurisdiction to BENHA; discusses the need to change BENHA's composition in order to reflect representation of RCFE administrators; and analyzes the costs of such a transfer. The report concludes that BENHA should be able to administer the RCFE administrator certification process for approximately the same costs as does DSS' Community Care Licensing Division; and recommends that the current RCFE certification process be changed to a licensing program under BENHA. Although the report is not conclusive in nature, its finding generally support the transfer proposal and it offers recommendations which would facilitate that transfer.



After reviewing the report, the Board discussed reasons why BENHA should take over the RCFE program. The Board noted that DSS may not be able to adequately administer the RCFE program due to recent budget cuts. Further, DSS licenses facilities while BENHA—which is part of the Department of Consumer Affairs (DCA)—licenses people; hence, it makes more sense for DCA to oversee the RCFE administrator program. In order to fully evaluate the feasibility of the transfer and address public and provider concerns appropriately, the Board decided to hold public hearings and contact all organizations representing RCFEs to request input.

At its August 28 meeting, the Board received written and oral comments from RCFE administrator associations regarding the transfer proposal. Both the Residential Care Facilities for the Elderly Conference of the California Association of Health Facilities and the California Association of Residential Care Homes communicated their general support for the transfer proposal. However, the Community Residential Care Association of California submitted written comments in which it “vigorously oppose[d]” the proposed transfer, based primarily on the fact that the state has already spent several years studying whether the RCFE administrator program should be delegated to DSS or BENHA (during which time BENHA expressed no interest in administering the program) and, based upon that study, has statutorily delegated the function to DSS.

BENHA scheduled public hearings in Sacramento on October 14 and in Los Angeles on December 8 to allow for full discussion and debate on the proposed transfer. In the meantime, the Board may attempt to secure a sponsor for the necessary legislative amendments and hopes to establish an interim agreement with DSS so that it can transfer functions of the RCFE licensure program to BENHA as soon as possible.

BENHA to Participate in Long-Term Care Demonstration Project. On May 19, the Medical Board of California (MBC) requested BENHA’s participation in a Quality of Long-Term Care Demonstration Project to be conducted in cooperation with the Department of Aging and several other state agencies. According to MBC, the goal of this project is to improve the quality of care in licensed long-term care facilities. The Citizen Advocacy Center (CAC), sponsored by the American Association of Retired Persons (AARP), has been encouraging several states, including California, to engage in such demonstration projects, which would

test the effectiveness (in resolving long-term care quality problems) of a closer working relationship between the Department of Aging’s Ombudsman Program and the boards that license the various medical professional and technical persons involved in nursing home care. Specifically, the Ombudsman would report to a central location regarding specific instances or recurring observed problems with the quality of care; those reports would be reviewed by the participating licensing boards to assess whether the reported problems represent issues for investigation or possible formal discipline, or whether they should be retained for consideration of other appropriate actions for dealing with the quality of care issue.

At its June 23 meeting, BENHA agreed to participate in the program. The first meeting of participants in the project was scheduled for October 15.

Examination and Enforcement Statistics. The pass rate for the April 9 state NHA exam was 46%; the national exam pass rate was 40%. The pass rate for the July 9 state exam was 51%; the national exam pass rate was 47%.

From April 1 to July 31, DHS referred to BENHA three citations for “AA” violations, and 98 “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 four months, BENHA conducted four informal telephone counseling sessions and issued one letter of warning.

In August, BENHA published its list of NHAs whose licenses are suspended or revoked or who were placed on probation through July 31. Eight NHAs are on probation, two of whom are working as designated administrators of a nursing home. 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, BENHA provides DHS with a monthly list of all changes of facility administrators reported to the Board, as well as 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

AB 3209 (Epple) requires that, when an attending physician of a resident of a skilled nursing facility or intermediate care facility determines that a resident cannot give informed consent to prescribed medical intervention, the physician shall inform the facility; authorizes the attending physician and facility to initiate medical intervention in accordance with a specified procedure; and exempts a physician or other health care provider whose actions under the bill are in accordance with reasonable medical standards from administrative sanction if the physician or other health care provider believes in good faith that the action is consistent with the terms of this bill and with the desires of the resident if known to the health care provider. The bill was signed by the Governor on September 30 (Chapter 1303, Statutes of 1992).

SB 635 (Bergeson) adds section 14110.05 to the Welfare and Institutions Code to encourage the timely and accurate submission of applications for Medi-Cal reimbursement by nursing home residents. The bill requires DHS to ensure that nursing facility residents have access to assistance in identifying and securing the information necessary to complete the Medi-Cal eligibility application and to make the eligibility determination, and to ensure the timely processing of Medi-Cal applications for nursing facility residents in accordance with state and federal law. The bill acknowledges that nursing facilities do not have a role in assuring the completion of the Medi-Cal application process. As a result, facilities may be left with neither a source of private payment nor government reimbursement and may have no option but to write off care expenses as business losses. In response, this bill specifically encourages nursing facility participation in the Medi-Cal program, and requires DHS to evaluate proposals to increase the timeliness, efficiency, and effectiveness of the Medi-Cal eligibility process. The bill was signed by the Governor on June 4 (Chapter 84, Statutes of 1992).

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all Department of Consumer Affairs boards, bureaus, and commissions, including BENHA, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).



SB 664 (Calderon). Existing law prohibits nursing home administrators, 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, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

RECENT MEETINGS

At its August 28 meeting in San Diego, the Board praised Executive Officer Ray Nikkel for his efforts in convincing BENHA's counterpart board in Texas to adopt NAB's licensure process. Texas is the fiftieth state to adopt NAB's guidelines; previously, the pass rate on the Texas NHA exam was 99%. The Board also thanked outgoing BENHA members John Colen and Donald Henderson for their contributions to the Board.

FUTURE MEETINGS

December 9 in Los Angeles.

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 malfasant 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, including three public members and six licensed optometrists. Recently, Senate President pro Tempore David Roberti appointed public member R. Mona Tawatao to the Board; and Governor Wilson appointed Kenneth H. Woodard, OD, from Eyexam2000, and John R. Anthony, OD, a private practice optometrist.

MAJOR PROJECTS

Board Holds Public Hearings on Mobile Optometric Practice at Nursing Facilities and Optometric Technician/Assistant Category. In September, the Board held public hearings in Santa Ana and Sacramento on two issues: the desirability of allowing optometrists to operate mobile optometric units at nursing home facilities, and the proposed creation of a new optometric technician or assistant category. [12:2&3 CRLR 131]

With regard to mobile optometric practice, the discussion at both hearings focused on what constitutes "mobile." Section 1507(e), Title 16 of the CCR, states that mobile optometric facilities "may only function as a part of a school teaching program as approved by the Board." Therefore, current law apparently prohibits a licensed optometrist from using an equipped mobile van as an "office," whether at a nursing facility or elsewhere. However, since many nursing home residents are unable to travel to practitioners' offices for care, optometrists and other health care professionals typically visit nursing homes to provide such care (though generally not using a mobile office). At one of the hearings, a representative from the California Optometric Association (COA) stated that optometrists should be able to treat patients as needed at nursing facilities; COA also believes that patients can be protected by a policy of allowing optometric care at a nursing facility if requested by the patient, the patient's family or guardian, the patient's physician, or the administrator of the facility, followed by an appropriate note on authorization and treatment in the patient's chart. COA does not support an exclusively mobile operation by an optometrist without a permanent office location, as the Association believes this would pose a risk to patients of fraudulent activity.

COA's position corresponds to Business and Professions Code section 3076, which states that any registered optometrist temporarily practicing outside or away from his/her regular and registered place of practice shall deliver to each patient there fitted or supplied with glasses a signed receipt which indicates his/her permanent registered place of practice, the number on his/her license certificate, a specification of the lenses furnished, and the amount charged for them. Assuming an optometrist meets all of the legal requirements, COA believes that there should be no restriction on the number of patients seen at a given facility. Other hearing participants pointed out that

it is cost-efficient for an optometrist to see a number of patients at the same nursing home site, and that since it often is difficult to obtain quality professional care for such patients, this also makes good consumer sense. Some speakers opined that consumers will be protected if optometrists provide services only when requested, not by solicitation. There was also some discussion of existing "charitable" vision screenings offered in mobile vans at sites such as shopping centers and nursing facilities; although no one expressed opposition to such operations, participants queried whether they are authorized under current law.

The Board also heard testimony regarding the desirability of establishing a new category of optometric technicians or assistants. Practicing optometrists favored the proposal particularly since ophthalmologists currently utilize medical assistants or other health care personnel to perform routine duties. The Board heard testimony claiming that due to the lack of a corresponding category for optometric practice, optometrists work at a competitive disadvantage. COA's legal counsel suggested that the Board work through the legislative process—rather than the regulatory process—to enact such a change. Board and staff generally agreed; however, staff emphasized the value of the hearing process for eliciting information before proceeding with legislation. Hearing participants discussed the proper scope of practice for optometric technicians, generally agreeing that only optometrists should perform interpretive functions.

Budget Bill Impact. Last-minute negotiations in the legislature left the Board's 1992-93 budget authorization at the same level as 1991-92 (\$785,000). However, the 1992-93 Budget Bill, which was finally signed on September 2, requires special-funded agencies—including the Board—to reduce 1992-93 expenditures by 10% over 1991-92 expenditures, and transfer that 10% to the state general fund on June 30, 1993. Although Board operations will be impacted by this requirement, the burden is somewhat eased by the legislature's passage of AB 2566 (O'Connell) (*see infra* LEGISLATION), which permits the Board to increase licensing fees.

Occupational Analysis Update. Preliminary work has begun on the Board's occupational analysis of practicing optometrists to test their level of knowledge and to determine the scope of their practice. [12:2&3 CRLR 132] Such information will assist the Board in evaluating the current state licensure examination. The Board anticipates that the