Governor on July 26 (Chapter 438, Statutes of 1990).

RECENT MEETINGS:

At BLA's August 17 meeting, the Board agreed to pursue legislative changes to Business and Professions Code sections 5640 and 5641, to incorporate tougher language for enforcement of unlicensed activity, as suggested by DCA's Division of Investigation. The Board also agreed to seek legislation which would incorporate the use of a misdemeanor citation, to assist the Executive Officer in handling enforcement cases in a more effective manner.

FUTURE MEETINGS:

To be announced.

MEDICAL BOARD OF CALIFORNIA

Executive Director: Ken Wagstaff
(916) 920-6393
Toll-Free Complaint Number:
1-800-MED-BD-CA

The Medical Board of California (MBC) is an administrative agency within the state Department of Consumer Affairs. The Board, which consists of twelve physicians and seven lay persons appointed to four-year terms, is divided into three autonomous divisions: Licensing, Medical Quality, and Allied Health Professions.

The purpose of MBC and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed, or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code section 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues. The Board's regulations are codified in Chapter 13, Title 16 of the California Code of Regulations (CCR).

The functions of the individual divisions are as follows:

MBC's Division of Licensing (DOL) is responsible for issuing licenses and certificates under the Board's jurisdiction; administering the Board's continuing medical education program; suspending, revoking, or limiting licenses upon order of the Division of Medical Quality; approving undergraduate and graduate medical education programs for physicians; and developing and administering physician and surgeon examinations.

The Division of Medical Quality (DMQ) reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcement of the disciplinary and criminal provisions of the Medical Practice Act. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, other health professionals, and lay persons assigned by DMQ to investigate matters, hear disciplinary charges against physicians, and receive input from consumers and health care providers in the community.

The Division of Allied Health Professions (DAHP) directly regulates five non-physician health occupations and oversees the activities of eight other examining committees and boards which license non-physician certificate holders under the jurisdiction of the Board. The following allied health professions are subject to the jurisdiction of DAHP: acupuncturists, audiologists, hearing aid dispensers, medical assistants, physical therapists, physical therapist assistants, physician assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts, speech pathologists, and respiratory care practitioners.

MBC's three divisions meet together approximately four times per year, in Los Angeles, San Diego, San Francisco, and Sacramento. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

MAJOR PROJECTS:

Physician Discipline Bill Enacted. The bill which will begin the long-awaited overhaul of DMQ's physician discipline system was signed by Governor Deukmejian on September 30. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 74-75; Vol. 9, No. 3 (Summer 1989) pp. 54-56; and Vol. 9, No. 2 (Spring 1989) pp. 1 and 60 for background information.) SB 2375 (Presley)—also known as the Medical Judicial Procedure Improvement Act—is a 39-section bill which infuses DMQ's discipline system with information on physician misconduct and negligence from a wide variety of sources; authorizes DMQ to suspend a physician's license on an interim basis pending conclusion of the disciplinary process; injects a much-needed prosecutorial influence into the process; and creates a special panel of administrative law judges to hear medical discipline cases. The bill was endorsed by the California Medical Association (CMA) and—after many objections and amendments—was finally supported by the Medical Board toward the end of the legislative session. (*See infra* LEGISLATION for details on SB 2375.)

In defense of its system, DMQ emphasized during its September meeting that physician discipline has increased by 41% over the past year. From July 1, 1989 to June 30, 1990, 141 doctors were formally disciplined (an increase over 99 discipline actions during the prior year). When confronted with the fact that even 141 disciplinary actions appear minimal, considering that well over 6,000 complaints were received during that period, the Medical Board defended its output by stating that at least half of the complaints it receives are not within the Board's jurisdiction, have no merit or are frivolous, cannot be confirmed, are withdrawn, or the complainant will not cooperate. DMQ members also noted that other complaints have some merit but that there is not enough evidence of wrongdoing; thus, these complaints are dismissed but saved in case of future complaints.

In a related matter, the number of consumer complaints about physicians is expected to rise dramatically now that MBC's new toll free number—1-800-MED-BD-CA—is operational and is being published in telephone directories statewide. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 98 for background information.) Although MBC Executive Director Ken Wagstaff stated that he "can't believe there will be a doubling of [complaints] for the price of a long distance phone call," DMQ public member Gayle Nathanson expressed concern that the Board may be underestimating the number of people who previously had complaints but had no idea where to go or who to call. After discussing the number of additional staff needed to handle the expected deluge of complaints, DMQ made no decision, but entertained suggestions for as many as 48 new investigators, supervisory staff, and clerical support positions. DMQ Program Manager Vern Leeper indicated that, at minimum, eight temporary investigator positions should be made permanent.

Discipline Backlog: The Numbers Game. In a March 31 report to the legislature, DMQ admitted that its backlog of medical discipline cases, most of which involved patient harm, had increased to 914 cases awaiting investigation by January 1, 1990. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 97 for background information.) At that time, 1,161 cases were already under investigation. By July 1, 1990, the backlog of cases awaiting investigation had decreased to 675, but the number of cases under investigation increased to

1,488. Although DMQ maintains that these figures represent a 26% decrease in "backlogged" cases, the total number of cases within the system increased from 2,075 to 2,163, which represents an increase of 4%.

In addressing DMQ's backlog problem during March, the Senate and Assembly budget subcommittees appropriated only half of the Board's budget for the 1990-91 fiscal year. Before considering an appropriation for the second half of the fiscal year, the subcommittees wanted a report from the Board demonstrating a 15% reduction in its backlog of unassigned investigative cases by July 1, 1990. The Governor deleted much of this budget language, stating that it was "overly restrictive" and "could have the unintended effect of preventing the Board from continuing to provide consumer protection." However, the Governor did not oppose the legislature's directive to reduce the backlog, and indicated that he would support urgency legislation to restore full funding to the Board to be available upon attainment of the 15% reduction goal.

At DMQ's September meeting, staff announced that this goal had been met. The number of cases in the "backlog" (which the Board defines as cases awaiting investigation) had further decreased to 525, which represents a 22% decrease from July 1 and a 41% decrease from January 1. However, the number of cases under investigation again increased, this time to 1,501. Thus, although the backlog of cases awaiting investigation decreased by 43% since January 1, the number of cases either awaiting investigation or under investigation only decreased from 2,075 to 2,026, for a net decrease of 2%.

At the September full Board meeting, various MBC members discussed this shifting of numbers from one column to the other. Ken Wagstaff admitted that the shifting of cases does not necessarily resolve the problem, but indicated that it is necessary to go along with the reduction plan that the legislature has mandated. However, some Board members remained concerned that the legislature and the public would see through the number shifting and consider it a mere ploy to convince them that the Board's serious backlog problem is being resolved.

DMQ Chief Vern Leeper addressed the Board's concern over the difficulty of hiring new DMQ investigators, noting that this shortage is the major reason for the continuing overload of cases. Ronald Kramer, assistant chief of the Board's enforcement program, submitted an investigatory upgrade package to the Department of Personnel Administration on July 12, 1990. This package requested the reclassification for Department of Consumer Affairs Investigators in an effort to increase salary to a level at least equivalent to that of investigators in other agencies doing the same type of work.

Parallel Criminal and Administrative Proceedings. For many years, DMQ has asserted that it is prohibited from bringing a disciplinary action against a physician while criminal charges against that physician based on the same act are pending, citing *People v. Sims*, 32 Cal. 3d 468 (1982). As a result of this blanket policy, physicians charged with serious felonies—including crimes directly related to patient care—were allowed to continue practicing medicine throughout the sometimes-lengthy criminal proceeding until all appeals were exhausted. After unsuccessfully attempting to seek modification or reversal of the *Sims* decision through a proposed amendment to SB 2375 (Presley), DMQ recently reevaluated this policy.

Sims is a procedurally and factually complex case involving the welfare fraud provisions in the Welfare and Institutions Code (WIC). In *Sims*, the Sonoma County Social Services Department instituted an administrative welfare fraud case against June Sims, seeking recovery of alleged overpayments based on material misrepresentations made by Sims; Sims later agreed to repay the county at a rate of $50 per month. Several months later, the county filed a "notice of action" seeking to reduce Sims' future welfare payments to compensate for the alleged overpayments. Sims requested a "fair hearing" pursuant to WIC section 19050 to challenge the propriety of the county's action.

Before the administrative hearing could be held, the district attorney filed a criminal complaint against Sims for welfare fraud, alleging a felony violation of WIC section 11483. At that time, section 11483 specifically required that a demand for restitution precede criminal prosecution for welfare fraud. At Sims' "fair hearing" before a hearing officer of the California Department of Social Services (DSS), the county declined to present any evidence against Sims, instead contending that DSS lacked jurisdiction over the case because the criminal case was pending against Sims. The hearing officer overruled the county's objection, found that DSS had jurisdiction over Sims, concluded that the county failed to satisfy its burden of proving that Sims had fraudulently obtained welfare benefits, and ordered the county to rescind its action against Sims.

Subsequently, Sims moved to dismiss the criminal charges against her, on grounds that the hearing officer's decision rendered the county's restitution demand void; therefore, the requirement of section 11483 had not been met. In the alternative, Sims argued that the "fair hearing" decision barred the criminal prosecution under the doctrine of collateral estoppel. The trial court granted Sims' motion and dismissed the criminal case; the state appealed.

On appeal, the California Supreme Court ruled that the doctrine of collateral estoppel barred the state from criminally prosecuting June *Sims* for welfare fraud, because the county failed to prove that exact offense at Sims' "fair hearing" before DSS. Although the Supreme Court noted that the *Sims* case concerned only "whether a DSS fair hearing decision has binding effect in a collateral criminal proceeding," and was careful to narrow its holding to "the particular and special circumstances of this case," the Medical Board has repeatedly cited the case as the basis for the Board's failure to institute disciplinary action against a physician who is the subject of criminal charges for the same conduct.

On August 10, a DMQ subcommittee consisting of public member Frank Albino (an attorney), public member Theresa Claassen, and DMQ President Dr. Rendel Levonian met with Deputy Attorney General Jana Tuton and several MBC staff members to discuss the viability of the *Sims* case as a bar to MBC enforcement action during the pendency of a criminal prosecution against a physician based on the same facts. Following the meeting, the subcommittee decided to recommend that DMQ adopt a general rule that the Attorney General's Office should file an accusation and proceed with a disciplinary action in cases where a criminal action is pending, except in four circumstances:

-where the criminal charges are unrelated to medical practice and have no effect on patient care;

-where the criminal charges concern Medi-Cal, tax, or insurance fraud;

-in cases referred to the Board by a local, state, or federal agency, and where that agency has asked the Board to defer enforcement; and

-in exceptional circumstances, such as when a temporary restraining order or other court order preventing the physician from practicing is in effect, or where the district attorney has asked the Board to defer enforcement until the criminal case has concluded.

At DMQ's September meeting, the Division unanimously adopted the subcommittee's proposal.

The Scope of MBC's Diversion Program. At its September meeting, DMQ members and staff engaged in a lengthy discussion of the scope and procedures of the Board's Diversion Program. The Program, established in Business and Professions Code section 2340 *et seq.*, was created to enable MBC to "identify and rehabilitate physicians and surgeons with impairment due to abuse of dangerous drugs or alcohol, or due to mental illness or physical illness, affecting competency so that physicians and surgeons so afflicted may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety." DMQ has the authority to divert physicians into this program as an alternative to instituting discipline proceedings. Approximately 60% of those who enter the program are required to participate; the other 40% are self-referred.

During the September meeting, DMQ discussed whether sex offenders should be admitted (or self-referred) into the Diversion Program. Several issues were addressed, the first of which is the difficulty of monitoring a sex offender's compliance with the program and/or improvement. Physicians who are drug or alcohol abusers may be tested for compliance, but there are no tests for sex offenders. Deputy Attorney General Jana Tuton expressed concern about the problems which participation in MBC's Diversion Program would pose for a prosecutor bringing a criminal action against a physician for sexual misconduct; the Board's own staff may be called to testify on the physician's progress in the program, which may dilute the prosecutor's case. Diversion Program Manager Chet Pelton provided background information on several sex offenders who have participated in the program, and noted that physicians who are under treatment for sexual misconduct are not permitted to attend a patient without having another medical professional in attendance. He also stated that—with regard to what he characterized as "slip-ups"—his staff only reports to DMQ "slip-ups" which relate to patient care; other "slip-ups" are not reported. This prompted much concern from DMQ public member Frank Albino, who insisted that staff immediately report all deviations from the treatment program to the Division.

After considerable discussion, Albino moved that no cases of sexual misconduct be referred to the Diversion Program except by DMQ as part of the discipline process, or if DMQ's Enforcement Chief has insufficient evidence to pursue a disciplinary action; and that all "slip-ups" in the area of sexual misconduct be reported immediately to DMQ. Albino's motion was thereupon amended several times and then passed. However, in the process of debating numerous confusing amendments, DMQ is unclear as to what it approved. At this writing, the official tape recording of the meeting is being transcribed, and the matter will be revisited at the November meeting.

MBC to Leave DCA? Over the summer, MBC continued to investigate the possibility of leaving the Department of Consumer Affairs. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 98 and Vol. 9, No. 3 (Summer 1989) p. 55 for background information on the Board's dissatisfaction with DCA.) In June, Board members Dr. Ellis and Dr. Rider met independently with Clifford Allenby, Secretary of the Health and Welfare Agency (the agency under which MBC has contemplated relocating), and Shirley Chilton, Secretary of the State and Consumer Services Agency (DCA's parent agency), to discuss MBC's possible admission to and departure from those agencies, respectively. However, in a joint letter, Allenby and Chilton later informed MBC that without further investigation and discussion, they are not in favor of the Board moving out of DCA at the present time. David Caffrey, a Cabinet Secretary for the Governor, told the Board that several other agencies also want to leave DCA; thus, the administration is reluctant to let MBC leave at this particular time. According to Dr. Ellis, Mr. Caffrey suggested sending a letter to the Governor's office expressing the Board's desire to leave DCA, and asking the Governor to ensure that MBC's ambition would be on the agenda of the next administration.

At the September meeting, Dr. Ellis, chair of the Long-Range Planning Committee investigating the possible move, repeatedly emphasized his belief in the "philosophical" incompatibility of DCA and MBC, and argued that the Board would be much better positioned outside DCA. However, leaving DCA may be easier said than done. According to a memorandum prepared by Board staff, numerous considerations which have yet to be fully explored will ultimately influence whether MBC is permitted to leave DCA. For example, MBC currently pays DCA approximately $1.5 million per year for various administrative services, including mail and copying, budgeting, accounting, personnel, training, legal, data processing, and other necessary services. The staff memo inquired whether MBC would acquire the personnel and resources to provide its own administrative services, or pay a new parent agency to provide these services; whether the costs would be higher or lower; how DCA would adjust to the loss of revenue if MBC were no longer purchasing these services from it; whether DCA would need to charge its remaining boards and bureaus more to cover the costs previously borne by MBC; and which offices would leave DCA—for example, the Medical Board only, or the Medical Board and some or all of its allied health committees.

In light of these logistical problems, MBC members engaged in considerable debate over whether the Board should first attempt to determine these unknowns, or immediately proceed to contact the Governor to determine whether the Board's desire to move will even be considered. On the one hand, writing the Governor to get permission might prove to be premature if it is later discovered that leaving DCA is simply not practical. On the other hand, expending time and money to blueprint the cost and logistics of a move from DCA might prove wasteful if the Governor is simply going to disapprove the endeavor.

A motion was finally carried authorizing the Long-Range Planning Committee to draft a letter to be sent to the Governor's Office, asking the Governor's transition team to add the matter of the Board's desire to leave DCA to the list of issues he recommends for the attention of the new governor. The Board will therein advocate that its first preference is to become an autonomous agency; failing that, it seeks departmental status. Executive Director Ken Wagstaff cautioned the Board against seeking anything less than departmental status, as he believes that becoming a bureau within any department other than DCA might lead to even worse problems for the Board. The draft letter was scheduled for presentation to the Board at its November meeting.

Resolving DAHP's Identity Crisis. At both its June and September meetings, DAHP discussed draft legislation which would clarify and expand the Division's present authority over the individual allied health boards and committees. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 77 and Vol. 9, No. 4 (Fall 1989) pp. 63-64 for background information.) Currently, Business and Professions Code section 2006 provides that the Division has "responsibility" for the various actions of the allied health committees, but provides no explicit muscle enabling DAHP to assert itself in the manner in which various members would like. Furthermore, the separate enabling act of each allied health board and committee takes precedence over the general grant

of authority to DAHP into section 2006. Thus, the first proposed amendment to section 2006 would preface the remainder of the amended statute with the words, "[n]otwithstanding any other provisions of law," thereby obliterating in a single line the various bits of independence scattered throughout the enabling statutes of the lower boards and committees.

The remainder of the draft amendments would grant the Division discretionary authority to review regulatory and disciplinary actions of the lower boards and committees, and would empower the Division to investigate a lower board or committee if the Division believes a particular board or committee is not acting in its own best interest. Furthermore, under the draft discussed at the September meeting, following such an investigation of a lower board or committee, the Division would make recommendations to the Medical Board, the Speaker of the Assembly, or the Senate Rules Committee regarding any action it believes to be appropriate in light of any investigation. Thus, through the amendments to section 2006, the Division seeks to provide itself with the express authority to more forcefully assert itself in the affairs of the allied health professions, which currently enjoy varying degrees of independence in the Division's shadow. The relevant question is whether the proposed legislation would increase the efficacy of the allied health boards and committees and thereby enable them to better serve the public, or whether it is merely a means to resuscitate an otherwise unnecessary DAHP.

The Division slated continued discussion of the proposed legislation for a special October 17 meeting in Los Angeles with all allied health profession boards and committees, and for November 16 in Sacramento (at the next scheduled MBC meeting).

DAHP Regulatory Action. At its September 7 meeting, DAHP reported on the status of its medical assistant regulations. Presently, medical assistants (MAs), as unlicensed individuals, are legally permitted to administer certain injections and draw blood samples. In practice, however, MAs routinely perform other tasks that are technically illegal. Addressing the concerns of MAs and supervising physicians, SB 645 (Royce) (Chapter 666, Statutes of 1988) was enacted, permitting DAHP to adopt regulations establishing standards for technical supportive services which may be performed by a medical assistant.

DAHP subsequently proposed and adopted new regulatory sections 1366, 1366.2, and 1366.4; and renumbered existing section 1366 as new section 1366.1, and existing section 1366.1 as new section 1366.3. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 76-77 and Vol. 9, No. 2 (Spring 1989) p. 61 for background information.) Collectively, the new regulations define the technical supportive services which may be performed by an MA under the supervision of a physician or podiatrist. DAHP submitted the proposed regulations to the Office of Administrative Law (OAL) for approval on July 27.

On August 27, OAL notified the Division that it had disapproved the proposed MA regulations for failing to comply with the consistency and clarity standards of Government Code section 11349.1, and for the Division's failure to submit a complete rulemaking file. Specifically, OAL found the proposed regulations did not meet the consistency standard of section 11349.1 because the rulemaking record failed to demonstrate that DAHP had submitted the regulations to the DCA Director for review, as required by Business and Professions Code section 313.1.

OAL ruled the clarity standard of section 11349.1 was not met due to the ambiguity of the phrase "additional technical supportive services" in proposed section 1366, which headed a list of permissible services which may be performed by MAs. OAL found the phrase ambiguous, as it is not clear whether the list is exclusive or merely illustrative of permitted services. Additionally, section 1366 of the regulations was found to be unclear regarding the following: the required presence of a supervising physician during patient treatment by MAs; possible confusion between the provision prohibiting MAs from performing tests involving the penetration of human tissue and the provision allowing skin tests in general; and the absence of essential information regarding required MA training in infection control pursuant to recommendations of the U.S. Department of Health and Human Services.

Finally, the rulemaking file was found to be incomplete due to the absence of the following: (1) a statement confirming compliance with the requirements of section 44, Title 1 of the California Code of Regulations, pertaining to fifteen-day public notice of changes to the regulations; (2) information relied upon relating to the requirement that MAs be trained in standard practices of infection control pursuant to the recommendations of the U.S. Department of Health and Human Services; and (3) information demonstrating that the public was given a full opportunity to comment upon the regulations at a public hearing for which adequate notice was provided.

At its September 7 meeting, the Division presented a redraft of the regulations, in which it had attempted to correct the clarity problems specified by OAL. The regulations were released for a fifteen-day public comment period; thereafter, they will be sent to the DCA Director and returned to OAL for another attempt at approval.

Also at its September meeting, DAHP held a public hearing to discuss the Hearing Aid Dispensers Examining Committee's (HADEC) proposed citation and fine regulations (new sections 1399.135-.139), but—at the request of the Hearing Aid Association of California—postponed any action on the regulations until its November meeting, when it will again solicit public input (*see infra* agency report on HADEC for further information); and announced that the rulemaking file on its proposed amendment to section 1374(h) (regarding experience requirements for research psychoanalyst licensure) is now complete, and has been sent to OAL for approval. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 77 for background information.)

DOL Shifts on Proposed PGT Requirement. At its June meeting, DOL approved staff's recommendation to seek legislation increasing the postgraduate training (PGT) requirement before an applicant is eligible for licensure in California. After discussing the matter for over a year, and entertaining a considerable amount of testimony from medical schools, training facilities, and various trade associations, the Division—for now at least—has decided to support a two-year requirement instead of a three-year requirement. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 99-100; Vol. 10, No. 1 (Winter 1990) pp. 75-76; and Vol. 9, No. 4 (Fall 1989) pp. 62-63 for extensive background information.)

After reviewing all the testimony and PGT requirements in other states, staff recommended that each applicant for a physician's license be required to complete two years of PGT (instead of the current one-year requirement). Under staff's proposal, a provisional license may be issued for a period not to exceed two years, upon certification by the Residency Training Program Director of successful completion of the first year of PGT. The provisional license would afford the applicant an opportunity to

engage in gainful employment ("moonlighting") or to complete a one-year course of study outside of the residency program while still satisfying the medical licensure requirement of a second year of PGT. The applicant must obtain a full and unrestricted license by the end of the second year of PGT or by the end of the second year of the provisional license, unless approval is sought and obtained from DOL for a break in PGT due to an undue hardship. DOL plans to ask Assemblymember Filante to carry the proposed legislation during the 1991 session.

Section 1324 Programs. The future of certain DOL-approved clinical training programs for foreign medical graduates (FMGs), commonly known as "section 1324 programs" (after the section of the CCR in which they were created by the Medical Board), remains uncertain. Under section 1324, Chapter 13, Title 16 of the CCR, DOL may approve as meeting its statutory one-year PGT requirement programs which do not meet the requirements of the Accreditation Council on Graduate Medical Education (ACGME), which traditionally accredits all residencies. Section 1324 was apparently adopted by DOL in the early 1970s to provide FMGs—who often have difficulty securing an ACGME-accredited residency so as to become eligible for California licensure—with an alternative training route. Currently, only seven facilities in California offer section 1324 programs.

Section 1324 programs have come under considerable fire in the past two years. Critics argue that the training programs are inferior to those approved by the ACGME; that there are sufficient ACGME-accredited residencies in California to accommodate FMGs; and that the approval criteria used by DOL in evaluating section 1324 criteria are not comparable to those used by the ACGME. They also question the motive of the health facility offering the program due to its allegedly exploitative nature—at one institution, an FMG is charged $35,000 for a one-year section 1324 training program. Following a request by the California Medical Association (CMA) to abolish the programs, DOL members Dr. Fredrick Milkie and Ray Mallel engaged in a site visit to each of the programs, and presented a report on the issue. At its December 1989 meeting, DOL reaffirmed its support for (and even expressed a desire to expand) the section 1324 programs, but agreed that certain amendments to section 1324 are necessary. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 100; Vol. 10, No. 1 (Winter 1990) p. 76; and Vol. 9, No. 2 (Spring 1989) p. 61 for background information.)

At its June and September meetings, DOL held public hearings on section 1324 programs generally and some proposed regulatory changes to sections 1324 and 1325.5. Specifically, the proposed amendments to section 1324 would require the health facility sponsoring the program to (among other things) have an affiliation agreement with an approved medical school or be the site of an accredited residency program; have a minimum capacity of at least 100 beds; have a governing body, administrative, management, medical director, and teaching staff necessary to administer the educational needs of the program; require the medical director to be board-certified in a specialty area of medicine; prohibit the facility from charging the trainee any fee for participation in the program, and require the facility to pay each trainee a stipend; set forth the responsibilities of trainees under a section 1324 program; and provide for the execution of a training agreement between the facility and the trainee (the contents of which are specified).

At the June meeting, DOL circulated numerous letters strongly opposing the continuation of section 1324 programs, including letters from CMA, the California House Officer Medical Society, the Charles R. Drew Postgraduate Medical Center, and the medical schools at UCLA, UC Irvine, USC, Loma Linda University, UC San Diego, Stanford, UC San Francisco, and UC Davis. One of the letters noted that Dr. J. Alfred Rider, a longtime DOL member and current president of MBC, operates a section 1324 program at his San Francisco facility, and urged that Dr. Rider's conflict of interest be raised and resolved.

At the September meeting, CMA proposed several amendments of its own to section 1324, in the event DOL insists on continuing the programs. Specifically, CMA believes the sponsoring facility should be required to have an affiliation agreement with the dean's office of an accredited medical school, or should be the site of an accredited residency program in the major fields of medicine or have an accredited program in family medicine. CMA also urged DOL to increase the minimum size of a sponsoring facility to 150 beds with 70% occupancy. Next, CMA believes the medical director should not only be board-certified, but should possess demonstrable qualifications as a teacher, clinician, and administrator. Finally, CMA urged DOL to create its own internal "residency review committee" to evaluate section 1324 programs on an ongoing basis. The panel would consist of outside, independent consultants knowledgeable about postgraduate training who would regularly visit and review section 1324 programs and report to DOL with recommendations for action.

DOL's proposed amendment to section 1325.5 also drew fire. Section 1325.5 currently sets forth the criteria for DOL's approval of fellowship programs for foreign-trained physicians not located in hospitals affiliated with a medical school; these criteria are currently incorporated by reference into section 1324 and are thus applicable to section 1324 programs. The Division's proposed amendment to section 1325.5 would require that a program's teaching staff be supervised by a medical director who possesses a "medical doctor" degree and is licensed as an "M.D." in California. The Board of Osteopathic Examiners, the College of Osteopathic Medicine of the Pacific, and an osteopathic trade association all objected to the proposed language on grounds that it discriminates against physicians holding a D.O. degree from an accredited school of osteopathic medicine and violates section 2453 of the Business and Professions Code, which provides that equal professional status be accorded to allopathic (M.D.) and osteopathic (D.O.) physicians. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 99-100 for background information.)

DOL was unable to take action on either of the proposed regulatory changes at its September meeting because it lacked a quorum. Thus, it is reviewing all the comments made at the June and September meetings, and was scheduled to take up this issue once again at its November meeting.

Other DOL Rulemaking. At its September meeting, DOL held a regulatory hearing on proposed amendments to section 1351, which would increase the examination fee for the complete Federal Licensing Examination (FLEX) from $465 to $520; the fee for Component I of the FLEX from $290 to $320; the fee for Component II of the FLEX from $340 to $375; and set the examination and reexamination fee for the Special Purpose Examination (SPEX) at $375. Because DOL lacked a quorum, it was unable to take action on the proposed regulatory change.

On August 9, OAL rejected DOL's amendment to section 1328 of its regulations. The amendment specifies that DOL's "written examination" requirement for FMGs may be satisfied by either (1) Components I and II of the FLEX, or (2) Parts I and II of the Nation-

al Board of Medical Examiners (NBME) exam, plus Component II of the FLEX. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 63 for background information on this change.) OAL found that the amendment failed to comply with the consistency and clarity standards of Government Code section 11349.1.

National Practitioner Data Bank Status Report. The National Practitioner Data Bank (NPDB), created pursuant to the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 *et seq.*, officially opened on September 1. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 75 for background information.) All state licensing agencies regulating health care professions, professional medical associations and organizations, insurance companies, health maintenance organizations, and hospitals are required to report to and query the Bank regarding disciplinary and/or malpractice actions concerning a physician or dentist. Allied health profession reporting is not yet required, but will be implemented at a later date. Only prospective disciplinary and malpractice actions as of September 1, 1990 will be reported.

The NPDB, operated by UNISYS for the U.S. Department of Health and Human Services, is not available to consumers, but is designed to collect nationwide information on the misconduct of physicians and to promote communication between licensing agencies and health care providers. However, the federal government has opened a toll-free help line (1-800-767-6732) for those with questions regarding the Bank.

LEGISLATION:

The following is a status update on bills previously reported in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 100-02:

SB 2375 (Presley), as amended August 29, makes numerous changes in DMQ's physician discipline system. Some of the more significant provisions of the bill will accomplish the following:

-enhance and improve required reporting of suspected incidents of physician incompetence or gross negligence to the Medical Board, for tracking and investigation by the Board as appropriate; for example, the bill requires coroners to report evidence of a physician's gross negligence, district attorneys to report felony charges against physicians, court clerks to transmit conviction records and certain felony preliminary hearing transcripts, and probation officers to submit probation reports;

-increase the maximum penalty against hospitals and medical facilities which fail to report adverse peer review action (*e.g.*, revocation, suspension, or denial of hospital privileges) to the Medical Board, as required by section 805 of the Business and Professions Code;

-provide for the appointment of a Senior Assistant Attorney General to head the Health Quality Enforcement Section (HQES) in the Department of Justice. The HQES will prosecute violations against licensees of the Medical Board and the Board of Podiatric Medicine;

-authorize DMQ to issue interim orders imposing drug testing, continuing education, supervision of procedures, or other license restrictions pending the final conclusion of the discipline case; and

-provide for the designation of certain administrative law judges by the Director of the Office of Administrative Hearings; these ALJs will be given preference for cases involving medical discipline of health care professionals, and will preside exclusively over the adjudication of interim remedies.

SB 2375 was signed by the Governor on September 30 (Chapter 1597, Statutes of 1990).

AB 3932 (Speier), as amended July 3, would have defined as unprofessional conduct the charging of an excessive fee, and would have authorized the recovery of DMQ's costs for investigating the violation of that provision in specified circumstances. This bill was vetoed by the Governor on September 30.

AB 4088 (Friedman), as amended May 25, would have provided that it is a crime for any licensed physician who has undertaken the care of a dependent person, and who intentionally or with gross negligence, under circumstances or conditions which cause great bodily harm, serious physical or mental illness, or death, fails to provide for the dependent person's care or commits an act or omission which causes great bodily harm, serious physical or mental illness, or death. This bill died in the Senate inactive file.

AB 2856 (Isenberg), as amended June 14, would have substantially revised the immunity granted under existing law to participants in certain peer review activities, including peer review committees of certain licentiates of the healing arts. The bill would have limited the immunity to review of the quality of care or services conducted by members of these committees who are volunteers, and would have made the immunity conditional upon satisfying requirements of the bill for reporting defined adverse actions to governmental licensing agencies. This bill died in the Senate Judiciary Committee.

SB 2365 (Keene), as amended August 27, modifies section 650 of the Business and Professions Code, which provides that it is not unlawful for a physician to refer a person to a laboratory, pharmacy, clinic, or health care facility solely because the physician has a proprietary interest or co-ownership in the facility. This bill limits these referrals to circumstances where the return on investment for the proprietary interest or co-ownership is proportional to the amount of capital investment or proportional ownership of the physician. This bill was signed by the Governor on September 29 (Chapter 1532, Statutes of 1990).

AB 3955 (Speier), as amended August 24, would have required DMQ, when reviewing a physician's practice during any investigation, to have the investigation be accomplished by peers. The bill would have required the Division to first give consideration, in its selection of peers, to diplomates from the same specialty board as the licensee, or to members of the same specialty academy, society, association, or college, as defined. This bill, which the Board opposed due to the perceived danger of having "quacks" reviewing "quacks," was vetoed by the Governor on September 30.

SB 660 (Watson), as amended August 13, would have required the Office of Statewide Health Planning and Development to administer three county pilot programs to establish physician and surgeon peer review bodies in nursing facilities. This bill was vetoed by the Governor on September 14.

SB 1911 (Mello), as amended May 29, amends existing elder abuse reporting requirements to specify that any person who fails to report an incident of elder or dependent adult abuse, as required by law, is guilty of a misdemeanor. This bill was signed by the Governor on July 11 (Chapter 241, Statutes of 1990).

SB 2328 (Killea). Existing law prohibits a provider of health care from disclosing medical information regarding a patient of the provider without first obtaining an authorization, except under specified circumstances. As amended August 16, this bill authorizes a provider of health care to disclose medical information regarding a patient when the disclosure is otherwise specifically authorized by law.

The bill also amends section 410 of the Health and Safety Code to require physicians to report to the local health officer specified information about patients 14 years and older who are diagnosed as having a disorder involving lapses of consciousness. If the physician

reasonably and in good faith believes that the reporting of a patient would serve the public interest, the bill authorizes the physician to report a patient's condition to the local health officer even if the report is not required under the Department of Health Services' definition of the above disorder. This bill precludes a physician who makes such a report from being civilly or criminally liable to a patient for making any report required or authorized pursuant to the bill's provision. This bill was signed by the Governor on September 13 (Chapter 911, Statutes of 1990).

SB 2239 (Doolittle), as amended August 22, deletes the requirement that physicians purchase summaries on blood transfusion options from the Board for distribution to their patients. Under the bill, the written summary may be obtained from the Board or from clinics, health facilities, and blood collection centers. This bill was signed by the Governor on September 12 (Chapter 820, Statutes of 1990).

SB 1802 (Greene), as amended August 22, authorizes a physician to prescribe or administer controlled substances to a person in the course of treatment of that person for a diagnosed condition causing intractable pain, and prohibits MBC from disciplining a physician for that prescribing or administering. This bill was signed by the Governor on September 30 (Chapter 1588, Statutes of 1990).

AB 2192 (Watson), as amended August 20, requires an advisory committee appointed by the Office of Statewide Health Planning and Development to conduct at least three public hearings in various locations throughout the state to study the current and potential role of allied health professionals in health care delivery, with an emphasis on their role in health care delivery in medically underserved areas. The advisory committee is required to solicit testimony from different professional organizations representing health professionals and allied health professionals, and is required to report its findings and recommendations to the Governor and legislature on or before June 30, 1992. This bill was signed by the Governor on September 20 (Chapter 1107, Statues of 1990).

SB 2036 (McCorquodale), as amended August 27, provides that a physician may include a statement in advertising to the effect that he/she is certified or eligible for certification by a private or public board or parent association, if that board is a specified private board, a board or association with equivalent requirements approved by the physician's licensing board, or a board or association with an approved postgraduate training program, as specified. This bill becomes operative on January 1, 1993, except that certain agencies or organizations may take action contemplated by the bill on or after January 1, 1991. This bill was signed by the Governor on September 30 (Chapter 1660, Statutes of 1990).

AB 3584 (Speier), as amended June 19, would have provided that no member of a licensing or regulatory board, bureau, or commission within the Department of Consumer Affairs shall accept any gift of $10 or more per month or honorarium from any person subject to the authority of that board, bureau, or commission (with the exception of gifts from family members). The bill would also have required board members to disclose on the record any personal or professional relationship, as specified, with any individual or entity appearing before the board, bureau, or commission at any hearing or other proceeding of that body, and to file a report with the Fair Political Practices Commission on the individual's or entity's appearance and the member's relationship with that individual or entity. Also, it would have set forth legislative findings and declarations regarding the reporting by members of regulatory bodies of the receipt of gifts. This bill died in the Senate inactive file.

AB 3203 (Speier), which would have prohibited hospitals participating in postgraduate physician training from allowing resident physicians to work more than a specified number of hours, died in the Senate Business and Professions Committee.

AB 3272 (Filante), as amended August 29, increases funding for the support of MBC from $9,509,000 to $14,253,000 for allocation, as specified. This bill also requires MBC to report to the legislature any recommendation on increasing the postgraduate training requirements for applicants for licensure as a physician. This bill was signed by the Governor on September 30 (Chapter 1629, Statutes of 1990).

SB 2388 (Russell), as introduced February 28, requires DOL, in determining its continuing education requirements, to consider including (1) a course in the early detection and treatment of substance-abusing pregnant women; and (2) a course in the special care needs of drug-addicted infants, to be taken by those licensees whose practices are of a nature that there is likelihood of contact with such women or infants. This bill was signed by the Governor on September 13 (Chapter 916, Statutes of 1990).

SB 2827 (Roberti), as amended August 7, requires DOL to encourage every physician to take a course in geriatric pharmacology as part of his/her continuing education. This bill was signed by the Governor on September 29 (Chapter 1539, Statutes of 1990).

LITIGATION:

In *Bergeron v. Desert Hospital Corporation*, 90 D.A.R. 6625, No. E-007187 (June 12, 1990), the Fourth District Court of Appeal affirmed the decision of the Riverside County Superior Court that a physician is entitled to due process in suspension from hospital privileges. The petitioner is a cardiologist who performed a cardiac catheterization on a patient in March 1989. The patient was discharged the following day and then admitted into another hospital for an angioplasty. Dr. Bergeron was suspended from the emergency room call roster for allegedly informing the patient that the hospital did not do angioplasties, when in fact the hospital was equipped to perform the procedure.

Petitioner challenged the suspension, on the ground that it was contrary to the hospital's medical staff bylaws. The hospital maintained that participation on the emergency room roster was not governed by the bylaws, because such participation is a duty rather than a right or clinical privilege. The trial court ruled in favor of Dr. Bergeron, finding that participation in the emergency room call roster is a "fundamental property right." The Fourth District affirmed, citing *Anton v. San Antonio Community Hospital*, 19 Cal. 3d 802 (1977): "the essential nature of a qualified physician's right to use the facilities of a hospital is a property interest which directly relates to the pursuit of his livelihood. This interest is clearly fundamental...."

In *Borrell v. Medical Board of California*, No. C744955 (Los Angeles County Superior Court), the court upheld MBC's revocation of the license of a physician who used urine injections to treat allergy patients. Judge John Zebrowski said he did not believe the Board's revocation of George Borrell's medical license was "beyond the bounds of reasonableness." Although counsel for Borrell argued that the treatment has been successful in other countries, Judge Zebrowski found that the treatment fell below the current California standard of care. The court also revoked a stay which allowed Borrell, provided he did not perform any urine injections, to practice medicine in clinics in Anaheim and Canoga Park. The Medical Board revoked Borrell's license for gross negligence, incompetence and performing acts of negligence on December 4, 1989.

On September 14, plaintiffs filed a petition for certiorari to the U.S. Supreme Court in *Le Bup Thi Dao v. Board of Medical Quality Assurance.* The plaintiffs, represented by the Center for Public Interest Law, seek review of an unpublished decision of the First District Court of Appeal holding that (1) states are not liable in damages for violations of 42 U.S.C. section 1981 (one of the federal civil rights statutes); and (2) individual Board and staff member defendants sued in their individual capacities may escape liability simply by asserting that they were acting in their official capacities at all times. The plaintiffs, Vietnamese physicians who graduated from the University of Saigon medical school after the April 1975 takeover of Saigon by communist forces, allege that DOL's two-year refusal to license them was arbitrary, capricious, and a violation of their civil rights. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 102-03; Vol. 9, No. 4 (Fall 1989) pp. 64-65; and Vol. 7, No. 2 (Spring 1987) p. 1 for extensive background information on this case.)

RECENT MEETINGS:

At its September 6-7 meeting in La Jolla, DOL was unable to take any official action because it lacked a quorum.

At its September meeting, DOL received a congressional report and proposed legislation regarding international medical graduates (IMGs) from the office of Representative Jim Bates (D-California). H.R. 5452 (Bates) proposes to establish a National Repository of International Medical Graduate Records, and is designed to eliminate discrimination against individuals who graduated from medical schools outside the United States or Canada. This clearinghouse for IMG records is supported by the American Medical Association, the Federation of State Medical Boards, and the International Association of Physicians.

However, DOL members opposed the bill on two grounds: (1) DOL believes the proposed legislation would remove the responsibility for licensure from the individual states; and (2) since medical schools outside the United States and Canada are not accredited by a recognizable international accrediting agency, graduates from those schools should be required to further demonstrate their eligibility for licensure in the states. The Division claims it would be unable to verify on a first-hand basis that the applicant's education is in compliance with California law. In addition, DOL members and meeting attendants vehemently rejected the clearinghouse proposal, stating that "there is no discrimination problem in California," and that the National Repository would be ineffective in documenting IMGs.

At its June meeting, DMQ voted to oppose proposed Department of Health Services regulatory changes relating to hospital staff privileges, since these proposals would delete existing requirements that only a physician may conduct a pre-anesthesia evaluation of a patient and a post-anesthesia examination prior to discharge, and allow these functions to be performed by other qualified practitioners.

The Medical Board is presently attempting to revive the Physician Loan Program, which ran for eight years but was terminated two years ago for apparent inefficacy. (See CRLR Vol. 10, No. 1 (Spring 1990) p. 77 for background information.) At MBC's September 7 meeting, Dr. Madison Richardson, chair of the Special Committee on Physician Loans for Underserved Areas, reported the Committee had met several times with the Office of Statewide Health Planning and Development (OSHPD), in an attempt to jointly augment similar programs administered by each. Dr. Richardson stated the Medical Board cannot hope to accomplish much alone with only the $100,000 per year it intends to spend, but working with OSHPD, which the Board considers especially knowledgeable regarding the geographic areas most in need, it hopes to make an impact upon health care services in those areas which have been designated as "underserved" by both OSHPD and Medi-Cal statistics.

Dr. Richardson stated that at the present time, the Committee's goals are to gather more information, gain concessions from Medi-Cal regarding increased reimbursements in the designated areas, and try to obtain lower premiums from malpractice insurance carriers serving such areas. The Committee was scheduled to meet again in November, and invited any organizations which are interested in furthering the program. Dr. Richardson added that he hopes to suggest legislation by the end of January 1991 to authorize the expenditure of the available money; Executive Director Ken Wagstaff stated that staff will include the program on a list of all projects it advocates the Board pursue during the upcoming session (upon which the Board was scheduled to vote at its November meeting).

FUTURE MEETINGS:

February 7-8 in Sacramento.
April 11-12 in Sacramento.

ACUPUNCTURE COMMITTEE

Executive Officer: Lynn Morris
(916) 924-2642

The Acupuncture Committee (AC) was created in July 1982 by the legislature as an autonomous body; it had previously been an advisory committee to the Division of Allied Health Professions (DAHP) of the Medical Board of California.

Formerly the "Acupuncture Examining Committee," the name of the Committee was changed to "Acupuncture Committee" effective January 1, 1990 (Chapter 1249, Statutes of 1989). That statute further provides that on and after July 1, 1990, and until January 1, 1995, the examination of applicants for a license to practice acupuncture shall be administered by independent consultants, with technical assistance and advice from members of the Committee.

Pursuant to Business and Professions Code section 4925 *et seq.*, the Committee sets standards for acupuncture schools, monitors students in tutorial programs (an alternative training method), and handles complaints against schools and practitioners. The Committee is authorized to adopt regulations, which appear in Chapter 13.7, Title 16 of the California Code of Regulations (CCR). The Committee consists of four public members and five acupuncturists. The legislature has mandated that the acupuncturist members of the Committee must represent a cross-section of the cultural backgrounds of the licensed members of the profession.

At its August 23 meeting, AC welcomed Margaret Filante, M.D., as a new physician member. Dr. Filante, who is the wife of Assemblymember William Filante, is a practitioner of acupuncture.

MAJOR PROJECTS:

Regulatory Proposal Disapproved. On August 31, the Office of Administrative Law (OAL) disapproved the Committee's proposal to adopt section 1399.445, Chapter 13.7, Title 16 of the CCR. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 63; Vol. 9, No. 1 (Winter 1989) p. 52; and Vol. 8, No. 4 (Fall 1988) p. 62 for background information.) The proposed change would have allowed an appeal of the practical examination score in writing within thirty calendar days from the date of notification of failure of the exam. The proposed regulation specified that the appeal must be based on one or more of the following grounds: (1) significant procedural error or environmental disadvantage in the test administration; (2) evidence of adverse discrimination; or (3) an error in the

content of the examination. Review of the appeal would have been conducted by one or more Committee members or the Committee's designee, and their findings would be subject to the approval of the Committee in its discretion.

OAL disapproved the proposed regulation because the Committee failed to satisfy the clarity and necessity standards, failed to summarize and respond to public comments, and failed to satisfy the procedural requirements of the Administrative Procedure Act (APA). AC plans to correct the deficiencies noted and resubmit this regulation to OAL.

Future of the Division of Allied Health Professions. At AC's August 23 meeting, Executive Officer Lynn Morris distributed draft legislation proposed by DAHP which would establish more control by the Division over the eight committees and boards regulating various health professions under DAHP's supervision. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 104 for background information.) Morris noted that she and Committee Chair David Chen would attend a special October 17 meeting, at which DAHP would meet with the various committees, in order to express AC's concerns over the provisions of the draft legislation.

Specifically, the draft legislation would grant DAHP the discretionary authority to review regulatory and disciplinary actions of the allied health boards and committees, and would empower the Division to investigate a lower board or committee if the Division believes a particular board or committee is not acting in its own best interests. Following such an investigation, DAHP could make recommendations to the Medical Board, the Speaker of the Assembly, or the Senate Rules Committee regarding any action it believes appropriate.

One of the events which triggered DAHP's proposed legislation was the examination scandal which has plagued AC for over a year. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 103-04; Vol. 9 No. 4 (Fall 1989) p. 65; and Vol. 9, No. 3 (Summer 1989) p. 58 for background information.) Following the bribery indictment of former AC member Dr. Chae Woo Lew for selling the Committee's licensing exam, DAHP member Alfred Song said that DAHP should either reassert its authority over all the allied health committees or be abolished.

Future Fee Increase. At the Board's August 23 meeting, the Committee discussed its projected fund condition, and agreed that AC would not have sufficient surplus to operate as of July 1991. This is due in part to the increased enforcement budget during 1989-90 and other corrective measures taken as a result of the examination scandal. Following discussion of this matter, the Committee passed a motion directing the Executive Officer to seek legislation implementing a fee increase and to attempt to amend existing statutes to allow for the collection of fees accrued in the renewal process.

LEGISLATION:

AB 3242 (Lancaster), the Department of Consumer Affairs' omnibus bill which, as amended July 27, staggers the terms of office of the members of the Acupuncture Committee, was signed by the Governor on September 21 (Chapter 1207, Statutes of 1990).

RECENT MEETINGS:

At AC's August 23 meeting, the Committee adopted a recommendation of the Schools Subcommittee to create a school monitoring program and to secure staff to implement that program.

Also at the August meeting, the Committee discussed the current requirement that applicants possess four "academic" years of schooling. The Committee adopted a Schools Subcommittee recommendation to clarify in a letter to schools that coursework must be extended over a minimum of four "academic" years, eight semesters, twelve quarters, nine trimesters, or 36 months.

FUTURE MEETINGS:

December 6 in Los Angeles.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Elizabeth Ware
(916) 920-6377

Pursuant to Business and Professions Code section 3300 *et seq.*, the Medical Board of California's Hearing Aid Dispensers Examining Committee (HADEC) prepares, approves, conducts, and grades examinations of applicants for a hearing aid dispenser's license. The Committee also reviews qualifications of exam applicants, and is authorized to issue licenses and adopt regulations pursuant to, and hear and prosecute cases involving violations of, the law relating to hearing aid dispensing. HADEC has the authority to issue citations and fines to licensees who have engaged in misconduct. HADEC recommends proposed regulations to the Medical Board's Division of Allied Health Professions (DAHP), which may adopt them; HADEC's regulations are codified in Chapter 13.3, Title 16 of the California Code of Regulations (CCR).

The Committee consists of seven members, including four public members. One public member must be a licensed physician and surgeon specializing in treatment of disorders of the ear and certified by the American Board of Otolaryngology. Another public member must be a licensed audiologist. The other three members are licensed hearing aid dispensers.

MAJOR PROJECTS:

Fee Increase. Due to increases in operating expenditures, HADEC has found it necessary to raise its annual licensing renewal fee from $75 to $200. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 105 for background information.) HADEC has not raised its licensing fee since 1977.

In May, HADEC released a news bulletin to hearing aid dispenser licensees outlining the three major reasons for the proposed fee increase: inflation, new program costs, and enforcement costs. The bulletin described the frugality with which this committee is managed: HADEC operates within the smallest budget of any allied health licensing program, maintains the smallest staff with the least-paid executive officer, and minimizes its meeting and travel costs. The bulletin concluded by reiterating HADEC's commitment to public safety while giving licensees a good return on their investment. (*See infra* LEGISLATION for further information on HADEC's fee increase.)

Rules for Supervision of Temporary Licensees. At its January meeting, HADEC approved language for new regulatory section 1399.115, regarding supervision of hearing aid dispenser trainees. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 105; Vol. 10, No. 1 (Winter 1990) p. 80; and Vol. 9, No. 4 (Fall 1989) p. 66 for background information.) DAHP approved the proposal in April and HADEC submitted the rulemaking file on new section 1399.115 to the Office of Administrative Law (OAL) for final approval. On August 27, OAL rejected the new rule because the rulemaking record failed to satisfy the clarity and necessity standards of Government Code section 11349.1. At this writing, HADEC is reviewing the proposal and will resubmit it after appropriate clarifications and changes are made.

Citation and Fine Regulations. Earlier this year, HADEC proposed new regulatory sections 1399.135-.139 to establish a system for citations and fines. (See

CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 105 for background information.) HADEC held a hearing on the proposed regulations at its July 21 meeting, and recommended some modifications in language.

Specifically, these new rules would authorize HADEC's Executive Officer to issue citations containing orders of abatement and fines for violations of specified provisions of law. The proposed regulations specify the content of a citation, the mode of service upon a licensee, and the range of possible fines. Additionally, they authorize the Executive Officer to issue citations and orders of abatement against persons who perform services for which licensure as a hearing aid dispenser is required, and set forth procedures for contesting any citation, order of abatement, or fine.

DAHP held a public hearing on these proposed regulations at its September 7 meeting, but deferred action on the proposals until its November meeting, due to opposition raised by the Hearing Aid Association of California.

Consumer Pamphlet. On June 20, HADEC submitted the final draft of a consumer education brochure entitled *Everything You Always Wanted to Know About Hearing Aids!* to the Department of Consumer Affairs. The brochure, which took two years to develop, is designed to educate the consumer on issues pertaining to hearing aid selection, choosing a hearing aid specialist, and contract and warranty language. The pamphlet will be HADEC's first consumer publication.

Committee Membership Changes. HADEC will soon be seeking two new members, as Robert Gillett, Jr. has resigned his position and Knox Brooks is closing out his grace year. According to Elizabeth Ware, HADEC's new Executive Officer, these vacancies will likely be filled by the end of the year.

LEGISLATION:

AB 3186 (Filante) increases the maximum fee for renewal of a permanent hearing aid dispenser's license from $75 to $200, but retains the maximum current fee for renewal of a temporary license. As amended July 7, the bill also provides that all permanent licenses shall expire on January 15, 1991 and, after that date, each permanent license shall be renewed in accordance with a cyclical renewal program to be established by HADEC. This bill was signed by the Governor on September 10 (Chapter 685, Statutes of 1990).

SB 1916 (Rosenthal), which authorizes the sale of hearing aids by catalog or direct mail by a licensed hearing aid dispenser under specified circumstances, was signed by the Governor on August 10 (Chapter 514, Statutes of 1990).

RECENT MEETINGS:

At HADEC's July 21 meeting, Elizabeth Ware was introduced as the Committee's new Executive Officer. She replaces Margaret McNally, who has taken a one-year leave of absence as of June 30, 1990. Also introduced was Betty Cordoba, the Committee's new public member. Hearing aid dispenser member Byron Burton was elected the new Committee Chair.

HADEC's September 14 meeting was cancelled due to lack of a quorum.

FUTURE MEETINGS:

November 30-December 1 in San Diego.

January 11-12 in San Francisco.

March 29-30 in Fresno.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Steven Hartzell
(916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 11,400 physical therapists. The Committee is comprised of three public and three physical therapist members. PTEC is authorized under Business and Professions Code section 2600 *et seq.*; the Committee's regulations are codified in Chapter 13.2, Title 16 of the California Code of Regulations (CCR).

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapy aides (PTAs), and physical therapists certified to practice electromyography or the more rigorous clinical electroneuromyography.

The Committee also approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam. There is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

In June, PTEC public member Patricia Goodman announced her resignation from the Committee.

MAJOR PROJECTS:

PTEC Regulatory Changes. The Committee has proposed revisions to sections 1398.20 (date for submitting applications for examination), 1398.47 (a)(1) and (a)(2) (to require PTA candidates to achieve a grade of "C" or better in all coursework), and 1399.50, 1399.52, and 1399.54 (all regarding fee changes), Chapter 13.2, Title 16 of the CCR. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 106 for background information.) On August 3, the Committee held a public hearing to accept oral and written testimony regarding the proposed changes. At the hearing, Louise Walters, representing the California Chapter of the American Physical Therapy Association (APTA), presented oral testimony and made suggestions for minor changes in wording. The Committee voted to approve all of the amendments suggested by APTA. The Committee also approved a suggestion of Executive Officer Steven Hartzell, to amend the language of section 1399.52(4)(a) to retain the original $50 application fee. No additional testimony was offered concerning the proposed regulatory changes. At this writing, PTEC is preparing the rulemaking package for submission to the Director of the Department of Consumer Affairs (DCA) and then to the Office of Administrative Law for approval.

Budget Report. At PTEC's June 22 meeting, Executive Officer Steven Hartzell noted that 100% of the 1989-90 budget will be expended. Regarding the 1990-91 budget, Mr. Hartzell stated that PTEC may pursue various budget change proposals (BCPs), including BCPs to implement a toll-free incoming telephone line in the Committee office; purchase certain items of equipment; and fund necessary out-of-state travel.

Mr. Hartzell also reported on BCPs anticipated for the 1991-92 fiscal year, which include increased funding for examinations, enforcement, staffing the proposed toll-free telephone line, fingerprint reimbursement, diversion program, and operating expense adjustments.

LEGISLATION:

SB 2512 (McCorquodale) authorizes the Committee to establish a passing grade for license applicants; requires the Committee to give notice of its meetings according to the Bagley-Keene Open Meeting Act; provides for the establishment of a diversion program for the rehabilitation of PTs and PTAs whose competency is impaired by the abuse of alcohol or drugs; provides that a registered pharmacist may furnish specified needle electrodes or hypodermic needles to physical therapists who are certified to perform tissue penetration as a part of the practice of physical therapy; and provides that the Committee, rather than the

Medical Board, shall issue, suspend, and revoke approvals, as well as issue, suspend, and revoke licenses, to practice physical therapy. Due to opposition by the California Medical Association and the Medical Board, August 6 amendments deleted the provision which would have renamed PTEC as the Physical Therapy Board. This bill was signed by the Governor on September 18 (Chapter 1087, Statutes of 1990).

LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n et al., v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento Superior Court), petitioners and intervenors (including PTEC) challenge the Board's adoption and OAL's approval of section 302 of the Board's rules, which defines the scope of chiropractic practice. An August 1989 court order presently allows chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation. The parties have been involved in extensive settlement negotiations since the August 1989 ruling. An August 2 status conference was postponed until October 5. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 106; Vol. 9, No. 4 (Fall 1989) p. 127; and Vol. 9, No. 3 (Summer 1989) p. 118 for background information.)

RECENT MEETINGS:

At PTEC's June 22 meeting, the Committee discussed the upcoming meeting between the Medical Board of California's (MBC) Division of Allied Health Professions (DAHP) and the various allied health committees and boards (including PTEC) under DAHP's jurisdiction. Executive Officer Hartzell recommended that PTEC members attend the meeting, which was scheduled for October 17.

Also at the June 22 meeting, PTEC discussed possible alternatives to its present policy of exclusively using MBC's Investigation Unit for all its investigative needs. PTEC noted the backlog of existing PT enforcement cases and the additional workload which its new citation and fine program will generate. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 106 and Vol. 9, No. 3 (Summer 1989) p. 59 for background information on the citation and fine program.) Executive Officer Steven Hartzell reported that he had been in contact with DCA's Division of Investigation, and had discussed the prospect of using some of its staff to supplement PTEC's investigatory efforts. The Committee noted that the use of the investigative resources of both agencies could expedite PTEC's processing of future discipline cases.

At its August 3 meeting, the Committee authorized staff to initiate the regulatory process to change the license renewal fee for PTs and the application fee for PTAs to $50. PTEC also authorized staff to prepare draft legislative language which would amend Business and Professions Code section 2688 to adjust the current fee schedule; and directed staff to draft language which would provide authority to recover investigative costs in discipline cases.

As noted above, amendments to SB 2512 deleted the provision which would have renamed PTEC as the Physical Therapy Board. In response, the Committee authorized staff to consult with all of the DAHP allied health committees to establish a legislative proposal renaming all of the committees as boards.

Also at the September meeting, PTEC discussed the circumstances under which a physician assistant (PA) may perform physical therapy modalities. The Committee concluded that a PA may use physical therapy modalities only under the scope of practice of the employing physician, and only if the following six conditions are met: (1) the PA must be competent to perform the procedure; (2) the PA must be educated, trained, or have experience in the procedure; (3) the procedure must be set forth in writing in a delegation of services agreement prepared and agreed upon by the PA and the supervising physician; (4) the procedure must be one that is common to the physician's specialty or usual and customary practice; (5) the procedure must be consistent with and not jeopardize the patient's health or condition; and (6) the PA may not be given the primary responsibility for the patient's continued care.

FUTURE MEETINGS:

December 14 in San Diego.
January 25 in San Francisco.
April 5 in Long Beach.
June 7 in San Diego.

PHYSICIAN ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The legislature established the Physician Assistant Examining Committee (PAEC) in Business and Professions Code section 3500 *et seq.*, in order to "establish a framework for development of a new category of health manpower—the physician assistant." Citing public concern over the continuing shortage of primary health care providers and the "geographic maldistribution of health care service," the legislature created the PA license category to "encourage the more effective utilization of the skills of physicians by enabling physicians to delegate health care tasks...."

PAEC certifies individuals as PAs, allowing them to perform certain medical procedures under a physician's supervision, such as drawing blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations, and assisting in surgery. PAEC's objective is to ensure the public that the incidents and impact of "unqualified, incompetent, fraudulent, negligent and deceptive licensees of the Committee or others who hold themselves out as PAs [are] reduced." PAEC's regulations are codified in Chapter 13.8, Title 16 of the California Code of Regulations (CCR).

PAEC's nine members include one member of the Medical Board of California (MBC), a physician representative of a California medical school, an educator participating in an approved program for the training of PAs, one physician who is an approved supervising physician of PAs and who is not a member of any division of MBC, three PAs, and two public members.

MAJOR PROJECTS:

1989-90 Annual Report. PAEC recently released its 1989-90 annual report authored by Executive Officer Ray Dale. The report noted that PAEC developed a request for proposals for implementation of its legislatively-mandated drug and alcohol diversion program. The Committee contracted with Occupational Health Services, Inc. in April to provide diversion program services to eligible licensed PAs. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 107 for background information.)

The annual report also discussed the Committee's enforcement activities, stating that PAEC began to utilize MBC's Central Complaint and Investigation Control Unit in May. Centrally located consumer services representatives review all complaints received; those complaints requiring urgent attention are immediately sent to an MBC regional office for investigation. Cases that are not considered life-threatening or otherwise high priority are handled in-house by the unit.

The Department of Consumer Affairs' CAS Phase II, Part I, a new Department-wide computer system

which automates enforcement tracking, was originally scheduled to be operational during fiscal year 1989-90, but delays have postponed operation until fiscal year 1990-91. CAS Phase II, Part I equipment, however, has been received and installed.

The report notes that various publications which were developed and printed by PAEC during 1989-90, including a booklet entitled *1989 Physician Assistant Regulations*, which was distributed to all new licensees and to all interested persons. PAEC also published a completely revised consumer education booklet entitled *What is a Physician Assistant?*.

During 1989-90, the Committee made recommendations for statutory changes (per section 129 of the Business and Professions Code). For example, in response to complaints received by PAEC concerning a PA's ability to provide narcotic drugs to patients in drug addiction treatment clinics, the Committee sponsored AB 3268 (Clute). The Committee also included language in AB 3268 which would have given PAEC authority to require a licensee to undergo clinical competency testing, under specified conditions. (*See infra* LEGISLATION for details.)

Diversion Program Brochure. In conjunction with its newly-established Diversion Program, PAEC recently released a brochure designed to inform PAs about the existence of this new program. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 107 for background information.) The brochure states that the purpose of the program is to identify and seek means to rehabilitate PAs whose competency is impaired due to the abuse of drugs and/or alcohol. Under this new program, impaired PAs can be counseled, referred for appropriate treatment, and returned to practice in a manner which will not endanger public health and safety.

Any California licensed PA who is experiencing an alcohol and/or drug problem is eligible to participate. A 24-hour toll-free number has also been provided for those PAs who are voluntarily seeking assistance. According to the brochure, there are two ways in which PAs may be referred to this program. PAs may be referred by the Committee from a disciplinary proceeding, or impaired PAs may refer themselves.

Any information which is shared with the program is by law confidential, is not subject to discovery or subpoena, and may not be disclosed for disciplinary reasons. PAs in the program are assured that their problem and its disposition will remain confidential. However, the Committee will be notified of unsuccessful program completion by PAs who were referred by the Committee as part of, or in lieu of, disciplinary action.

Scope of Practice Regulations. PAEC staff have completed the rulemaking file on the Committee's scope of practice regulations adopted by MBC's Division of Allied Health Professions (DAHP) in December 1989. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 107; Vol. 10, No. 1 (Winter 1989) pp. 81-82; and Vol. 9, No. 4 (Fall 1989) p. 68 or background information.) This rulemaking file was sent to the Department of Consumer Affairs (DCA) on September 13; DCA has thirty days to review the file. From there, the file will be sent to the Office of Administrative Law for approval.

Legal Opinion Regarding a PA's Performance of an Abortion. On July 25, DCA's Legal Office issued a legal opinion in response to an inquiry by PAEC regarding a PA's ability to perform an abortion. Sections 1399.540, 1399.541, and 1399.542, Title 16 of the CCR, set forth those medical services PAs may perform. Although specific medical procedures are not identified in the regulations, a PA may provide those medical services which he/she is competent to perform and which are consistent with the PA's education, training, and experience, and which are delegated in writing by a supervising physician. Under section 1399.541, a PA may perform any procedure delegated by the supervising physician where the procedure is consistent with the physician's specialty or usual and customary practice, and with the patient's health and condition.

DCA's review of section 1399.531, which contains curriculum requirements for approved training programs for primary care PAs, revealed that PAs are required to be trained in "common medical and surgical procedures." DCA stated that it cannot be inferred from this provision that PAs are trained to perform abortions in any or all PA training programs.

DCA then discussed section 1399.543, which provides that a PA may be trained to perform medical services which exceed his/her areas of competency in certain settings, such as in the physical presence of an approved supervising physician who is directly in attendance and assisting the PA in the performance of the procedure; an approved PA training program; a medical school approved by MBC's Division of Licensing (DOL) under section 1314 of DOL's regulations; a residence or fellowship program approved by DOL under section 1321 of DOL's regulations; or a facility or clinic operated by the federal government. DCA stated that although section 1399.543 sets forth those settings in which a PA may be trained to perform additional medical services, some services or procedures—by virtue of their complexity and risk to patient (such as abortions)—require more rigorous and lengthy training than others.

DCA noted that the regulations provide only guidelines; the PA and his/her supervising physician must exercise sound judgment, professional discretion, and adherence to commonly accepted standards of care when delegating duties to the PA. DCA concluded by stating that, if all of the requirements set forth by DCA are complied with, a PA may be authorized to perform an abortion.

LEGISLATION:

AB 3268 (Clute), as amended August 20, would have authorized the Committee to establish procedures for the administration of a cyclical license renewal program. Also, this bill would have authorized PAEC to order a PA to undergo a professional competency examination if, after investigation and review by specified persons, there is reasonable cause to believe that the PA is unable to practice with reasonable skill and safety to patients. This bill would also have included licensed PAs among persons who may administer a narcotic controlled substance in treating an addict for addiction. An attempted name change of the PAEC to the Board of Physician Assistants, which was part of the original bill as introduced, was deleted from the version passed by the legislature. Nonetheless, the Governor vetoed this bill on September 30.

RECENT MEETINGS:

At its July 27 meeting, PAEC discussed the Division of Allied Health Profession's (DAHP) desire to strengthen its control over allied health licensing boards and committees. DAHP believes that it has lost control over its programs and that it needs increased authority to protect the public. Draft legislation proposed by DAHP member Alfred Song was scheduled to be discussed at a joint public meeting on October 17 in Los Angeles.

PAEC also announced a processing fee increase for fingerprint cards. Approximately half of the applicants for PA licensing are from out of state, and fingerprint cards are useful in determining whether an applicant has a criminal record. The fingerprint card processing fee charged by the Federal Bureau of Investigation was increased from $14 to $20 effective March 1; the fingerprint

card processing fee charged by the state Department of Justice was increased from $18.50 to $27 on August 1. Therefore, effective August 1, the fee a PA applicant must submit with his/her application form was scheduled to increase to $72 ($25 application fee and $47 processing fee for both fingerprint cards).

FUTURE MEETINGS:
January 4 in Napa.

BOARD OF PODIATRIC MEDICINE

Executive Officer:
James Rathlesberger
(916) 920-6347

The Board of Podiatric Medicine (BPM) of the Medical Board of California (MBC) regulates the practice of podiatry in California pursuant to Business and Professions Code section 2460 *et seq.* BPM's regulations appear in Chapter 13.9, Title 16 of the California Code of Regulations (CCR).

The Board licenses doctors of podiatric medicine (DPMs), administers two licensing examinations per year, approves colleges of podiatric medicine, and enforces professional standards by initiating investigations and disciplining its licentiates. The Board consists of four licensed podiatrists and two public members.

Recently, two BPM podiatrist positions were filled. Dr. Joanne Watson replaced Dr. Richard Baerg; Dr. Watson has a background in private practice and is a member of the American Podiatric Medicine Association. Dr. Steven DeValentine replaced Dr. William Landrey, and has most recently been Chief Podiatrist for the Kaiser Permanente Medical Group.

MAJOR PROJECTS:

Viability of Independent BPM Analyzed. In light of the current controversy surrounding the appropriate level of authority of MBC's Division of Allied Health Professions (DAHP) over its subordinate boards and committees (including BPM), the Board has commenced a long-range study aimed at assessing the viability of gaining future independence from DAHP. (*See supra* agency report on MBC and CRLR Vol. 10, No. 1 (Winter 1990) p. 77 for background information on the current debate over DAHP's role.) If BPM becomes independent, DAHP's present authority to review and disapprove proposed BPM regulations would be eliminated, and BPM would no longer utilize MBC's investigators or other resources. This streamlining would have unknown fiscal impacts.

The issue of BPM's independence may create further conflict within a Board which recently has been plagued with infighting between two "major schools of thought," each represented by separate professional organizations. It is possible that any plan to strengthen BPM will meet with resistance from a number of licensed podiatrists, until guidelines are established which protect the interests of both schools of thought (and both trade associations) satisfactorily.

However, the Board and its staff believe that much of the recent conflict engulfing the Board can be directly traced to the *Apkarian* case involving former BPM member Dr. Richard Baerg and his business partner, Dr. Garey Lee Weber. (*See infra* LITIGATION; *see also* CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 109 for detailed background information.) Apparently, former BPM public member Steve Brown, an attorney who represented Weber in the *Apkarian* litigation, was responsible for the creation or recreation of the Affiliated Podiatrists of California (APC). The Board has never recognized this group as a professional organization, and instead believes it is a small number of individuals who tried unsuccessfully to lower the standard of podiatric care in California, by advocating what the Attorney General's Office characterized as "medical quackery" in the *Apkarian* case. BPM believes the *Apkarian* case represents a conflict between "the well trained and the poorly trained who espouse strange things," according to Executive Officer James Rathlesberger.

The APC has refused to identify its members or the number of members that it maintains, further causing the Board to believe that the APC was an elaborate hoax perpetrated by a few individuals. Over the past six months, the APC—and all claims of discrimination against its members—has been invisible.

To the extent that such is true, little professional opposition is anticipated against BPM's efforts to gain independence from DAHP. The Board's long-term goal is to shift BPM from DAHP to the Department of Consumer Affairs (DCA), although this may be difficult due to likely opposition from medical doctors. In the immediate future, BPM is primarily concerned with maintaining a distant relationship with DAHP, while improving its own enforcement practices, licensing standards, and political contacts within the legislature. A joint meeting between DAHP and its constituent committees and boards was scheduled for October 17 to discuss the role of DAHP in relation to the individual boards and committees.

Licensing Exam Statistics. In May 1990, BPM's licensing examination was given to 89 applicants; 82 passed the exam for a passage rate of 92%. This is the highest passage rate since the May 1985 exam. From November 1984 to May 1990, 590 candidates have taken the examination, with an overall passage rate of 84%.

Enforcement Update. In 1988-89, BPM received 193 complaints, and identified 168 of them for investigation. During that time period, four were sent to the Attorney General's office; eight accusations were filed; and two licenses were revoked. The statistics for 1989-90 are incomplete, but to date seven cases have been forwarded to the Attorney General's office, with two more referred to the District Attorney. Six accusations have been filed and four licenses have been revoked.

BPM is currently working to design a citation and fine program, although this would necessitate increased staff; DCA has supported this plan before the Department of Finance.

OAL Determination Sought. A request for determination from OAL was filed by Astrid Meghrigian, legal counsel for the California Medical Association, regarding whether a BPM policy decision meets the definition of "regulation" as found in Government Code section 11342(b), and therefore must be adopted pursuant to the Administrative Procedure Act. This policy decision, dated February 17, 1984, states that a doctor of podiatric medicine may use the "broader" terms of "podiatric physician," "podiatric surgeon," or "podiatric physician and surgeon," but not the "narrow" terms "physician and surgeon," "physician" or "surgeon." (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 108 for background information.) The policy decision further states that the Board "would not consider the broader usage in violation of the relevant statutes and would not investigate or prosecute a doctor of podiatric medicine who uses the broader titles."

The deadline for submitting written public comments to OAL was July 23; the deadline to receive a written agency response from BPM was August 6; and OAL anticipated releasing its determination by September 5. However, at this writing, OAL has not yet published its determination.

Although AB 2459 (Klehs) once included language authorizing a podiatrist to use the title "podiatric physician and surgeon," that provision was deleted from the final version of the bill which

was signed by the Governor. (*See infra* LEGISLATION.)

LEGISLATION:

The following is a status update on bills reported in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 108-09:

SB 2375 (Presley), as amended August 29, makes numerous changes in the physician discipline system of MBC's Division of Medical Quality, which is fully applicable to podiatrists. With regard to podiatrists, some of the more significant provisions of the bill will accomplish the following:

-enhance and improve required reporting of suspected incidents of podiatrist incompetence or gross negligence to BPM, for tracking and investigation by the Board as appropriate; for example, the bill requires coroners to report evidence of a podiatrist's gross negligence, district attorneys to report felony charges against podiatrists, court clerks to transmit conviction records and certain felony preliminary hearing transcripts, and probation officers to submit probation reports;

-increase the maximum penalty against hospitals and medical facilities which fail to report adverse peer review action against podiatrists (*e.g.*, revocation, suspension, or denial of hospital privileges) to BPM, as required by section 805 of the Business and Professions Code;

-provide for the appointment of a Senior Assistant Attorney General to head the Health Quality Enforcement Section (HQES) in the Department of Justice. The HQES will prosecute violations against licensees of the Medical Board and the Board of Podiatric Medicine;

-authorize BPM to issue interim orders imposing drug testing, continuing education, supervision of procedures, or other license restrictions pending the final conclusion of the discipline case; and

-provide for the designation of certain administrative law judges by the Director of the Office of Administrative Hearings; these ALJs will be given preference for cases involving medical discipline of health care professionals, and will preside exclusively over the adjudication of interim remedies.

SB 2375 was signed by the Governor on September 30 (Chapter 1597, Statutes of 1990).

SB 2036 (McCorquodale), as amended August 27, provides that a physician may include in advertising a statement that he/she is certified or eligible for certification by a private or public board or parent association, if that board is either a specific private board, a board or association with equivalent requirements approved by the licensing board of the physician, or a board or association with an approved postgraduate training program, as specified. This bill was signed by the Governor on September 30 (Chapter 1660, Statutes of 1990).

AB 2459 (Klehs) was substantially amended on August 16; the provision which would have authorized a podiatrist to use the title "podiatric physician and surgeon" was deleted. (*See supra* MAJOR PROJECTS.) Instead, this bill adds podiatrists to the list of specified licensees who may be selected by an insured under a disability insurance policy to perform covered services, if the licensee is authorized to perform those services. This bill was signed by the Governor on September 30 (Chapter 1569, Statutes of 1990).

AB 4088 (Friedman) would have provided that it is a crime for any person who is a licensed podiatrist who has undertaken the care of a dependent person, or whose duties of employment include an obligation to care for a dependent person, or to directly supervise others who provide direct patient care, and who intentionally or with gross negligence, under circumstances or conditions which cause great bodily harm, serious physical or mental illness, or death, fails to provide for the dependent person's care or commits an act or omission which causes great bodily harm, serious physical or mental illness, or death. This bill died in the Senate inactive file.

LITIGATION:

Because of problems arising from the stipulated judgment in *People of the State of California v. Apkarian, Weber, et al.*, No. C662345 (Los Angeles County Superior Court), the state has commenced an administrative enforcement action. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 109 for detailed background information on this case.) On September 20, BPM Executive Officer James Rathlesberger signed and filed with the Office of Administrative Hearings an accusation against the defendants, alleging that they have failed to comply with the monitoring and review aspects of the settlement with regard to the billing, patient care, and surgery standards recommended by the California Podiatric Medical Association and adopted by the court. The administrative action is designed to compel the defendants to abide by the terms of the settlement agreement by threatening to revoke their licenses to practice podiatry.

The Attorney General's office was also planning to file a contempt complaint with the court during the first week of October. The contempt proceeding will bring with it the possibility of criminal sanctions against each of the defendants for noncompliance with the court order.

RECENT MEETINGS:

At BPM's June meeting, the Committee reviewed several of its goals and objectives for the 1990-91 year, including:

-improving staff orientation and training;

-upgrading staff positions and salary;

-improving enforcement statistics;

-implementing a citation and fine program;

-eliminating administrative backlogs;

-developing plans for becoming an independent board; and

-improving communication and liaison with the legislature, the public, and the profession.

Also at BPM's June meeting, the Board reelected Rodney J. Chan as Board President, and elected Karen McElliott as Vice-President.

A major concern of BPM concerns its conflict of interest policy, which currently provides that "[b]ecause it is essential that a member of the Board of Podiatric Medicine have no prior knowledge, prejudice or bias with regard to a podiatrist who is a respondent in any matter before the BPM or the subject of any investigation conducted by the Board of Medical Quality Assurance [now the Medical Board of California] or the BPM, or an applicant before the BPM, no member of the BPM shall participate in any peer review of doctors of podiatric medicine, act as a representative of either a public or private entity, nor shall a member serve as an expert witness or consultant in any legal matter involving a doctor of podiatric medicine. This policy shall exclude any situation covered by the above criteria in which a member was involved prior to his or his appointment to the BPM." Based in part on the recent episode involving former Board member Dr. Richard Baerg, who acted as an expert witness against the Board in an action brought against Dr. Baerg's business partner (as part of the *Apkarian* case, *see supra* LITIGATION), the Board discussed possible changes to its policy at its September 21 meeting.

An initial recommendation was made to delete the last sentence of the present policy statement, because this was the sentence upon which Dr. Baerg had apparently relied when he proceeded to act as an expert witness against the

Board. However, the Committee agreed that a complete revision of the policy is necessary to clarify all ambiguities. BPM staff will draft recommended changes to the policy statement and present them for discussion at the Board's December meeting.

Also at its September meeting, the Board heard a request for termination of probation from Benny Weber, DPM. Weber, who is the brother of Dr. Garey Lee Weber, a defendant in the *Apkarian* case, is on probation in connection with charges of fraudulent billing and surgery practices during the period of 1984-86. The Board unanimously rejected Weber's request to terminate his probation, although it reduced the review requirement from every two months to every three months. Dr. Weber has one more year remaining on his probation.

FUTURE MEETINGS:

December 7 in Los Angeles.
March 1 in Sacramento.

BOARD OF PSYCHOLOGY

Executive Officer: Thomas O'Connor (916) 920-6383

The Board of Psychology (BOP) (formerly the "Psychology Examining Committee") is the state regulatory agency for psychologists under Business and Professions Code section 2900 *et seq*. BOP sets standards for education and experience required for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, investigates consumer complaints, and takes disciplinary action against licensees by suspension or revocation. BOP's regulations are located in Chapter 13.1, Title 16 of the California Code of Regulations (CCR). BOP is composed of eight members, three of whom are public members.

MAJOR PROJECTS:

Regulatory Amendment on Supervised Professional Experience. At a May 11 informal hearing and both its July and September meetings, BOP continued its discussion of proposed amendments and additions to regulatory section 1387, Chapter 13.1, Title 16 of the CCR. Through the amendments and additions, BOP intends to further define the criteria and responsibilities of a "qualified primary supervisor"; specify the length and type of required supervised professional experience; define acceptable group supervision; and delineate the responsibilities between supervisors and licensure candidates (supervisees) regarding the proper logging of supervised experience to ensure accurate verification that candidates and supervisors have met all requirements. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 110 and Vol. 9, No. 4 (Fall 1989) p. 71 for background information.)

Following an analysis of written and oral public comment from the May 11 informal hearing regarding the proposed regulations, BOP made tentative revisions to the draft there discussed. At this writing, a new draft reflecting the public comments and Board input is being prepared for a formal public hearing later on this year.

Draft Language Addressing Dual Relationships. On September 15, BOP reviewed the draft language of a proposed regulatory change which would define and prohibit relationships between a psychologist or psychological assistant or intern and a patient, outside the primary relationship of providing professional psychological services.

The proposed regulatory change, which would add section 1396.5 to Chapter 13.1, Title 16 of the CCR, would prohibit secondary relationships of a personal, social, or business nature, and delineate proper procedure for prevention and termination of any such "dual relationship" between a psychological professional and his/her patient.

After reviewing favorably the current draft, BOP decided it would be beneficial to contact the Board of Behavioral Science Examiners (BBSE) and arrange a joint meeting of the two boards to work on the proposed language together, thus ensuring that their respective regulations regarding dual relationships will be consistent.

Permit Reform Act Regulations. The Permit Reform Act of 1981 requires agencies that issue permits, licenses, certificates, registrations, or any other form of authorization to engage in any particular activity, to establish and follow timeline regulations for processing such applications. With few exceptions, the boards and bureaus within the Department of Consumer Affairs are subject to the provisions of the Act, and BOP—like a large number of other DCA agencies—has not yet adopted the required regulations. Swift adoption of these regulations is important, as the Office of Administrative Law (OAL) is occasionally refusing to approve new regulation filings if the promulgating agency or board has failed to adopt Permit Reform Act regulations. (*See infra "Fictitious Name Permit Program."*)

BOP expects to complete an analysis of its application processing period, and to adopt the required Permit Reform Act regulations within the next year.

Fictitious Name Permit Program. BOP is in the process of revising its regulatory action to establish the process for application and issuance of fictitious name permits, following its rejection by OAL last February. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 110 and Vol. 9, No. 4 (Fall 1989) p. 70 for background information.) However, this project has been temporarily shelved pending completion of the Permit Reform Act regulations (*see supra* for background information). Thereafter, BOP will again seek OAL approval of its fictitious name permit regulations.

LEGISLATION:

The following is a status update on bills reported in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at 110-11:

SB 2720 (Watson), as amended June 18, requires BOP, rather than the Medical Board's Division of Allied Health Professions (DAHP), to perform specified functions with respect to licensees of other states and issuance of licenses. The bill removes from DAHP the power to review and approve the amount of BOP application, examination, and other fees; and increases the biennial renewal fee for a psychologist and deposits it to the credit of the Psychology Fund. Additionally, the bill makes conforming changes with respect to the persons who may be shareholders, officers, directors, and employees of a psychological corporation. This bill, which was strongly supported by the Board, was signed by the Governor on September 7 (Chapter 622, Statutes of 1990).

AB 3314 (Harris), as amended August 9, requires BOP and BBSE to consider adopting continuing education (CE) requirements in the area of chemical dependency recognition and early intervention treatment, for those applying for license renewal as a psychologist, clinical social worker, or marriage, family and child counselor. The bill also makes legislative findings and declarations, and requires BOP and BBSE to report to the legislature on those matters by June 30, 1991. This bill was signed by the Governor on September 17 (Chapter 1005, Statutes of 1990).

AB 3328 (Bates), as amended August 27, no longer requires BOP and BBSE to consider adopting CE requirements in suicide intervention for all persons applying for renewal of a license as a psychologist, clinical social worker, or marriage, family and child counselor. Rather, the bill now requires the State Department of Mental Health to maintain an existing youth suicide prevention

program until January 1, 1993, and expresses the intent of the legislature, upon satisfactory evaluation of the existing youth program, to expand that program to address the needs of California's adult population in need of suicide intervention. This bill was signed by the Governor on September 18 (Chapter 1028, Statutes of 1990).

AB 3613 (Hughes), as amended May 10, includes the psychotherapist-patient privilege in a criminal proceeding with respect to a person exempt from the Psychology Licensing Law (PLL), a psychological intern, or a trainee. The bill also provides that the privilege applies in the case of a person exempt from the PLL and a psychological intern, if that person or intern is under the supervision of a licensed psychologist or a Board-certified psychologist; and in the case of a trainee, if the trainee is under the supervision of a licensed psychologist, a Board-certified psychologist, a licensed clinical social worker, or a licensed marriage, family and child counselor. This bill was signed by the Governor on September 9 (Chapter 662, Statutes of 1990).

SB 1583 (Watson), as amended May 16, would have specified that one of the two required experts providing evidence to have a child declared free from custody of parents who may be mentally disabled must be either a physician, a licensed psychologist, a licensed marriage, family and child counselor, or a licensed social worker, each with at least five years' postgraduate experience in the diagnosis and treatment of emotional and mental disorders. The other expert would have been required to be a physician, certified as specified, or a licensed psychologist with a doctoral degree in psychology and at least five years' postgraduate experience. This bill failed passage in the Assembly Judiciary Committee on August 15.

SB 194 (Morgan), as amended August 22, makes numerous substantive and technical changes in the Private Postsecondary and Vocational Education Reform Act of 1989. (See supra agency report on BOARD OF COSMETOLOGY for background information on SB 194.) This bill was signed by the Governor on September 29 (Chapter 1479, Statutes of 1990).

LITIGATION:

In *McGuigan v. California Board of Psychology*, No. 364481 (Sacramento County Superior Court), petitioner Dr. Frank McGuigan filed an application with BOP on December 28, 1984, for the issuance without examination of a license to practice psychology, in accordance with section 2946 of the Business and Professions Code, based on (1) his license in another state with requirements substantially equivalent to those of California, and (2) his significant contribution to psychology.

Following a period of correspondence with Dr. McGuigan, BOP notified him by letters dated July 29, 1987, and November 24, 1987, that his credentials satisfied all prerequisites to licensure except for the examination requirement, and that it had denied his request for licensure without examination based on its finding that the examination to which he had successfully submitted in the state of Virginia was not comparable to the examination administered in California. By letter dated May 23, 1988, BOP notified Dr. McGuigan that it had also denied his request for licensure without examination based on his significant contribution to psychology.

Thereafter, Dr. McGuigan requested that the Board provide him with a statement of issues and a hearing regarding the Board's denial of his request for licensure without examination. The Board denied the request, as well as subsequent similar requests by Dr. McGuigan's counsel, the Center for Public Interest Law (CPIL). Thus, on June 30, 1990, Dr. McGuigan filed a petition for writ of mandate in Sacramento County Superior Court, asserting his right to a statement of issues and a hearing regarding the Board's denial of his application for licensure. Dr. McGuigan asserted his right thereto under the Board's own regulation, section 1381.2, Chapter 13.1, Title 16 of the CCR, and Government Code section 11504, both providing for procedure to obtain a hearing in case of denial of licensure. Additionally, Dr. McGuigan asserted his rights under the due process clause of Article I, Section 7 of the California Constitution, and the due process clause of the fourteenth amendment to the U.S. Constitution.

On July 25, 1990, nearly three years after the Board's initial denial of Dr. McGuigan's application for licensure, the Deputy Attorney General representing BOP notified Dr. McGuigan's CPIL attorney that, although BOP maintains its position that a hearing is not required by law, BOP would grant Dr. McGuigan the administrative hearing he had sought for so long, but only on condition McGuigan agree to dismiss his lawsuit with prejudice, and with the stipulation that the granting of such hearing is not to be considered precedent for any other case or any other agency.

Dr. McGuigan would not agree to a dismissal of his petition. He based his refusal to dismiss on his belief that all psychologists licensed in other states are entitled to a statement of issues and a hearing on the Board's denial of an application for licensure without examination. Thus, he stipulated that any accord with BOP must include BOP's agreement that there is a general right to a hearing on all applications for licensure without examination and that BOP would take reasonable steps to so notify such applicants. However, BOP maintained there is no legal right to a hearing regarding denied licensure applications.

On August 31, a Sacramento Superior Court judge issued an oral order that, in light of BOP's agreement to grant a hearing in this specific case, the issue is moot. Dr. McGuigan and CPIL continue to assert that Dr. McGuigan and similarly situated applicants are entitled to a hearing by law, and not merely at the discretion of BOP.

In *California Ass'n of Psychology Providers (CAPP) v. Rank*, 90 Daily Journal D.A.R. 7283 (June 25, 1990), the California Supreme Court held that under California law, a hospital that admits clinical psychologists to its staff may permit such psychologists to take primary responsibility for the admission, diagnosis, treatment, and discharge of their patients. By a vote of 4-3, the court rejected the contention of the California Psychiatric Association, the California Medical Association, and the state Department of Health Services that a psychiatrist must have primary responsibility for the care of a psychologist's hospitalized patients.

The controversy, which is merely the latest battle in the fight between psychologists and the rest of the medical community regarding the parameters and authority of the profession of psychology, may be traced back to 1978, when the state legislature enacted Health and Safety Code section 1316.5, which allowed psychologists to become members of hospital staffs provided they "carry professional responsibilities consistent with the scope of their licensure and competence."

In 1980, the legislature supplemented the statute to provide that if a hospital offers a service both physicians and psychologists may perform, "such service may be performed by either, without discrimination."

However, the Department of Health Services interpreted the statute to forbid psychologists to carry the primary responsibility for the diagnosis and treatment of patients admitted to hospitals, prompting CAPP and eight individual psychologists to sue DHS director Peter Rank in 1984 in order to overturn the Department's regulations.

In July 1985, a Los Angeles County Superior Court judge agreed with the psychologists, and held that the regulations conflicted with the statute and were therefore invalid. Mr. Rank agreed to comply with the court order, but then the medical and psychiatric associations intervened and appealed, arguing that once a patient is admitted to a hospital, a psychiatrist or other doctor should be in charge, even when a psychologist admits the patient.

In June 1988, the court of appeal reversed the judgment of the trial court. It held that the legislature intended clinical psychologists to have the right to diagnose and treat their hospitalized patients without supervision from a physician "only in those instances where a physician has initially ruled out a medical basis for the patient's mental disorder and determined that it is not subject to medical treatment, and where the patient's mental disorder does not subsequently become susceptible to medical treatment after admission to the health facility." The statutory prohibition against discrimination, the court said, prohibits requiring supervision by a psychiatrist, but only "after a medical diagnosis and medical treatment have been ruled out...."

In overturning the appellate court decision and upholding the trial court, Justice Allen Broussard, writing for the majority, said the meaning of the statute (Health and Safety Code section 1316.5) is "reasonably clear on its face." Broussard noted that when a psychologist agrees to treat persons on an outpatient basis from their offices, no other profession is involved and the psychologist is necessarily in charge. "It would radically rewrite the statutes for us to hold that they confer primary responsibility for the diagnosis and treatment in an outpatient setting but that in a hospital the psychologist may diagnose and treat only if someone else assumes primary responsibility for such acts....The 'without discrimination' clause signifies that in performing such services the two professions [medicine and psychology], each authorized by law, stand on an equal footing; neither is subject to constraints from which the other is free."

In *Howard v. Drapkin*, 90 Daily Journal D.A.R. 8667 (July 31, 1990), the Second District Court of Appeal held that an independent psychologist, retained to evaluate the parties to a custody dispute involving allegations of child abuse, is entitled to quasi-judicial immunity.

Plaintiff Vickie Howard initiated family law proceedings seeking to have the visitation and custody rights of her former husband terminated based on allegations of physical and sexual abuse of the couple's minor son. Both parents stipulated to allow defendant Robin Drapkin, acting as an independent psychologist, evaluate the facts of the case and render a non-binding opinion and recommendation. The stipulation was signed by the court and converted into an order.

Drapkin met with and evaluated Vickie Howard, who later sued Drapkin for professional negligence. Drapkin demurred to the complaint, asserting quasi-judicial immunity based on her role in the family law proceeding. Howard argued that Drapkin was a private evaluator and thus was not a quasi-judicial officer entitled to immunity. The trial court sustained the demurrer and dismissed the complaint.

The court of appeal agreed, noting that when determining quasi-judicial immunity, courts look at the nature of the duty performed, not the title of the person who performs it or his/her job title. The inquiry should be whether the person asserting immunity is properly considered an advocate for a particular party or is neutral in the conflict. It was determined that the role of a psychologist—like that of a mediator, arbitrator, or judge—involves impartiality and neutrality. The court therefore held that "absolute quasi-judicial immunity is properly extended to these neutral third-parties for their conduct in performing dispute resolution services which are connected to the judicial process and involve either (1) the making of binding decisions, (2) the making of findings or recommendations to the court or (3) the arbitration, mediation, conciliation, evaluation or other similar resolution of pending disputes. As the defendant was clearly engaged in this latter activity, she is entitled to the protection of such quasi-judicial immunity."

RECENT MEETINGS:

At its September 15 meeting in San Diego, BOP unanimously adopted policy statements regarding the selection criteria for supervisors of probationers; selection criteria for experts to review disciplinary cases; and procedures for a probationer's appearance before the Board.

Regarding selection criteria for supervisors of probationers, the Board now requires a supervisor to have a minimum of five years' post-licensure experience; expertise in the same or similar area as the probationer and an understanding of the cause of discipline; no history of discipline against his/her license; a practice in the same geographic area as the probationer; and no previous professional, personal, social, business, or other relationship with the probationer.

Regarding selection criteria for experts to review disciplinary cases, the Board now requires such an expert to be currently licensed in California with a minimum of five years' post-licensure experience; expertise in the particular area being reviewed; and no history of discipline against his/her license.

Regarding procedures for a probationer's appearance before the Board, BOP developed a set of questions which it believes stress the rehabilitative purpose of the probationary period, by requiring the probationers to analyze the causes of their probation, their experience on probation, and the effect of their violations on their victims.

FUTURE MEETINGS:

To be announced.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards
(916) 920-6388

The Medical Board of California's Speech-Language Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech pathologists, three audiologists and three public members (one of whom is a physician).

The Committee registers speech pathology and audiology aides and examines applicants for licensure. The Committee hears all matters assigned to it by the Board, including, but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

SPAEC is authorized by the Speech Pathologists and Audiologists Licensure Act, Business and Professions Code section 2530 *et seq.*; its regulations are contained in Chapter 13.4, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Exam Waiver Interviews. Previously, section 1399.159 of SPAEC's regulations required California licensure applicants to have taken the national examination in their respective field within the five years preceding the date on which the application for licensure is filed. However, SPAEC recently amended section 1399.159, which now allows the

Committee to waive the five-year requirement under certain conditions, one of which is that the applicant must demonstrate to SPAEC that he/she has maintained his/her knowledge of speech pathology or audiology. The applicant must provide documentary evidence of such continued knowledge; and the Committee may require such an applicant to personally appear before it for an interview.

At its September 28 meeting, SPAEC discussed criteria for evaluating whether an applicant has maintained adequate knowledge of speech pathology or audiology. The Committee tentatively decided to require the following documentation: verification that the license application is complete; transcripts; exam scores; an updated resume; any extensive writing for publication which is applicable to the applicant's field; notarized copies of continuing education; and any documentation of work experience. SPAEC will also require that this documentation be in the Committee's possession at the time of the interview. The Committee will finalize these requirements at a future meeting.

Enforcement Subcommittee. SPAEC recently appointed an Enforcement Subcommittee to formulate disciplinary guidelines for violations of the Speech Pathologists and Audiologists Licensure Act and the Committee's regulations. The Subcommittee will also act in an advisory capacity to Committee staff in making enforcement decisions.

LEGISLATION:

AB 3787 (Leslie), as amended July 27, changes the Committee's name from the Speech Pathology and Audiology Examining Committee to the Speech-Language Pathology and Audiology Examining Committee, and makes conforming changes to existing law. Among other things, this bill revises the education requirements for licensure applicants, and increases the number of days which a speech-language pathologist or audiologist from another state may practice in California while awaiting California licensure. This bill was signed by the Governor on September 10 (Chapter 746, Statutes of 1990).

RECENT MEETINGS:

SPAEC's July 6 meeting was cancelled.

At its September 28 meeting, the Committee discussed the scheduled October 17 meeting between the Medical Board's Division of Allied Health Professions (DAHP) and its eight allied health boards and committees to discuss, among other things, proposed legislative changes to Business and Professions Code section 2006. The amendments would increase DAHP's authority over the allied health boards and committees by allowing DAHP to review and approve all regulatory changes sought by all allied health committees; review, in its discretion, disciplinary decisions of the allied health committees, including the adoption of uniform disciplinary guidelines; and commence investigations into the actions of any allied health committee, board member, or employee. SPAEC strongly opposes the draft legislation, and decided to send several representatives to the October 17 meeting to stress to MBC that SPAEC will do everything in its power to stop the proposed legislation.

Also in September, SPAEC discussed a memo from the American Speech-Language-Hearing Association (ASHA) on various issues related to mandatory continuing education (CE). The AHSA memo noted that, of the 39 states which have enacted speech-language pathology or audiology licensing laws, twenty require CE for license renewal while 16 states have no such requirement. The statutes of three states allow the licensing boards to institute such a requirement. SPAEC members agreed that a CE requirement is desirable, but that the timing is not right this year. SPAEC's budget will not accommodate the start-up costs of getting legislation passed and hiring more staff to enforce the legislation.

FUTURE MEETINGS:

February 1 in San Francisco.
April 18 in Long Beach.

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 Chapter 39, 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.

MAJOR PROJECTS:

Residential Care Facility Administrator Certification Study. The Department of Social Services' (DSS) advisory committee has until December 1 to determine which state agency is best suited to implement the certification of administrators of residential care facilities for the elderly (RCFE). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 112 for background information.) AB 2323 (Hannigan) (Chapter 434, Statutes of 1989) mandates the DSS study and requires one representative from the Department of Consumer Affairs (DCA) to sit on the committee. According to Executive Officer Ray Nikkel, he will not be representing DCA because his position with BENHA creates a possible conflict of interest. Among the agencies which may be charged with administering the RCFE program are DSS, which handles community care licensing; DCA, under which BENHA operates; and the Department of Health Services (DHS), which issues licenses for nursing home operation. Both BENHA and DHS currently administer certification programs.

Semiannual Disciplinary Action Notice Issued. In July, BENHA issued its semiannual notice of nursing home administrators who had their licenses suspended or revoked or who were placed on probation during the period of July 1987 to July 1990. BENHA is required to publish this list pursuant to AB 1834 (Connelly), a 1987 bill which compelled the Board to beef up its enforcement system. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 64; Vol. 9, No. 1 (Winter 1989) p. 58; and Vol. 8, No. 3