license renewals, and delinquent fees. These proposals are currently awaiting review by the Office of Administrative Law.

LEGISLATION:

During the 1989 session, the Board plans to pursue several legislative proposals, including an amendment to Business and Professions Code section 5651 to eliminate oral examinations for instate candidates, but retain them for reciprocity candidates. Section 5651 presently requires all applicants to pass both a written and an oral exam (see CRLR Vol. 8, No. 1 (Winter 1988) pp. 57-58 for background information).

The Board is also considering a legislative proposal to extend the statute of limitations for filing accusations against a licensee. Section 5661 sets the limit at two years from the time the disciplinable act is committed. The amendment would increase the time to three years from the time the Board discovers or should have discovered the act. Finally, a proposed amendment would add a clause to section 5681 allowing the Board to assess a fee for approving a school of landscape architecture.

RECENT MEETINGS:

At its December 2 meeting, the Board once again discussed the educational and professional experience required to sit for the national exam, as well as the merits of the exam itself. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 57 for background information.) For the past sixteen years, the BLA has administered the Uniform National Examination (UNE) to its candidates. Prior to that, the BLA wrote, administered, and evaluated its own examination. Last year, more than 600 California candidates took the UNE, comprising 40% of the total number of candidates taking the exam from the forty other states which license landscape architects and are members of CLARB.

California's UNE passage rate is historically low, although not disproportionate compared with that of other states. The results of the last CLARB exam show that only 17% of those taking the exam for the first time passed; only 26% of those repeating portions of the exam passed. Records indicate that candidates take the UNE an average of three times. In response to these statistics, the Department of Consumer Affairs' Central Testing Unit (CTU) has evaluated the UNE and has determined that certain portions of the exam are neither defensible nor job-related. Furthermore, the test's time constraints are not realistic.

Last year, California considered writing its own exam; however, the cost of preparing a California examination would most likely be prohibitive. Further, other states indicated an interest in working with California in approaching CLARB with their concerns about the exam. The Board appointed Paul Saito to head a subcommittee which will discuss whether BLA should continue administering the UNE or shift to its own exam; the subcommittee will report its recommendations at the next meeting.

Another area of concern is the requisite experience demanded nationally for candidates wishing to take the UNE. Currently, each state has a different experience requirement. The Board discussed one possible solution to this problem: the initiation of an Intern Development Program (IDP) to be administered by CLARB. Once all of the IDP requirements had been satisfied, the candidate would be able to take the examination in any state.

FUTURE MEETINGS:

To be announced.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Director: Ken Wagstaff
(916) 920-6393

BMQA 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: Allied Health, Licensing and Medical Quality.

The purpose of BMQA 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 sections 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues.

The functions of the individual divisions are as follows:

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

The Division of Medical Quality (DMQ) reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcing 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, allied health professionals and lay persons appointed to investigate matters assigned by the Division of Medical Quality, hear disciplinary charges against physicians and receive input from consumers and health care providers in the community.

Responsibilities of the Division of Licensing (DOL) include 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.

BMQA'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:

Enforcement Program. A critical shortage in resources claimed DMQ's attention in December as Vern Leeper, Chief of BMQA's Enforcement Program, reported on the outstanding backlog of enforcement cases, which exceeds 700 cases statewide. BMQA's present number of 98 investigators has not been increased in the past five years, despite efforts by Leeper to bring the manpower shortage crisis to the attention of the Office of the Attorney General, the Little Hoover Commission, and others.

The backlog figure represents physician negligence and complaint cases which have not yet been assigned to investigators. The 700 cases have received a preliminary screening to determine the severity category into which

they fall, but beyond that first step no work has or is being done on them. At the present time, a Category 1 complaint (*e.g.*, negligent surgery) might wait six months before it is investigated. Patients calling with less serious complaints about physicians are usually told to expect a nine-month wait before their complaint will be investigated.

Leeper attributed responsibility for the severe backlog, which he said BMQA will "never" catch up on, to the budget change proposal process. Leeper stated, "The budget change proposal process did not, has not, and will never work unless drastic changes are made." BMQA Assistant Executive Officer Tom Heerhartz noted to DMQ that education, prison, and law enforcement needs are receiving state funding, and "without public pressure to push for additional manpower funding, we will need to come to grips with the problem using our own resources."

Two major problems face DMQ: (1) with the current backlog, accused practitioners stay in practice until the complaint is investigated and resolved; and (2) consumers receive inadequate response to their complaints because of the inordinate delay. These problems are not unique to California. Heerhartz commented that other western states have similar problems for which they have developed working solutions.

Leeper urged that the Department of Finance might be swayed by public pressure demanding increased resources to handle the case backlog. BMQA investigators are already burdened with 70-80 files apiece. "Unless there is a human cry that the backlog is evil, the problem won't be treated as a street problem or drug problem or prison problem," according to Leeper.

One alternative to the resources shortfall is to increase physician licensing fees. In September 1988, DOL adopted rulemaking to increase the biennial physician renewal licensing fee from $255 to $290. However, in adopting this figure, DOL did not consider the need to raise revenue for an enhanced enforcement budget; it considered only the amount of revenue necessary to maintain an adequate reserve balance as required by section 2435(e) of the Business and Professions Code. In fact, DOL members have openly resisted public outreach measures (such as a toll-free complaint line) which might result in more BMQA visibility, more consumer complaints, the need for increased enforcement, and a dues increase to cover these costs. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 64 for background information.)

Other proposed solutions include a more cursory review of less significant cases and/or the temporary relocation of investigative personnel to handle a particular region's cases. At its March meeting, DMQ was expected to discuss other ideas to reduce the backlog.

Proposed Regulatory Changes. At this writing, two regulatory packages approved at DOL's September meeting are still being reviewed by staff counsel at the Department of Consumer Affairs before submission to the Office of Administrative Law (OAL). The first package amends sections 1351.5 and 1352, Title 16 of the California Code of Regulations (CCR), which will increase biennial renewal and license fees to $290. (For background information, see CRLR Vol. 8, No. 4 (Fall 1988) p. 58 and Vol. 8, No. 3 (Summer 1988) p. 62.)

The second package amends sections 1321 and 1315, to require that an applicant's clinical training be in contiguous blocks and that the required year of postgraduate training be a continuous year. (For more information, see CRLR Vol. 8, No. 4 (Fall 1988) pp. 58-59 and Vol. 8, No. 3 (Summer 1988) pp. 62-63.)

Site Visit. At its December meeting, DOL approved a final draft of the report to the legislature on the accredition of foreign medical schools mandated by AB 1859 (Chapter 1176, Statutes of 1985). (See CRLR Vol. 8, No. 4 (Fall 1988) p. 59 for background information.) Division members suggested that one solution to the ongoing problem of the extreme variation in educational experience provided by foreign medical schools would be to focus on the clinical postgraduate training (PGT) of each applicant. Such an emphasis would redefine the evaluation for licensure by increasing consideration of the product of medical education, rather than the process.

DOL members also discussed the comparative PGT required in other states. While the California requirement is now one year, the trend in some states is to increase either the PGT years required of all applicants or the years required of foreign medical graduates.

DOL's report included recommendations to the legislature to consider, among other things, implementing a three-year PGT requirement for all applicants for licensure, including graduates of U.S. and Canadian schools, effective 1994. This recommendation would require statutory changes in the Business and Professions Code.

Another recommendation contained in the report suggests legislative authority allowing BMQA to adopt basic criteria for certifying foreign accreditation systems using data developed by a national body, the Coordinating Council on Foreign Medical Education.

Competency Examination. DOL also voted to include in the AB 1859 report a discussion of the possibility of developing a competency examination to be given to all first-year residents, which would focus on clinical skills. The development of a skills or competency examination is one proposal of the Federation of State Medical Boards' Subcommittee on Uniform Examination Pathway to medical licensure. This national board is considering a uniform exam track for all medical school graduates, to include parts one and two of the National Board of Medical Examiners examination and a clinical competency test in the first year of PGT.

Implementation of SB 645. At its December 2 meeting, DAHP opened up discussion of its draft regulations defining the training and duties of medical assistants pursuant to SB 645 (Royce) (see CRLR Vol. 8, No. 4 (Fall 1988) p. 60 for background information). The draft regulations would permit medical assistants (MAs) to perform numerous functions (provided the MA is authorized by a licensed physician or podiatrist and is trained to so perform them), including the administration of medication; the application and removal of simple bandages and the removal of sutures from superficial incisions or lacerations; the collection of specimens; preparation of patients for examinations; the collection of patient data; and the performance of simple laboratory tests. The draft regulations provide that MAs may be trained either by the supervising physician/podiatrist (or by a registered nurse, licensed vocational nurse, or physician's assistant acting under the direction of a licensed physician/podiatrist), or in a formal MA training program.

Members of educational associations expressed concern about the lack of standardized educational requirements for MAs. Presently (and under the draft regulations), a person hired by a physician and trained in an office may use the title "medical assistant". The other way to become an MA is through a formal medical assistant training program. The educational association representatives pointed out that people trained in offices may be trained to work with only one physician and are not necessarily thoroughly trained to perform basic functions. In addition, MAs who have not received formal educational

training are training new people as medical assistants. Educators believe that a standardized curriculum for MAs is necessary.

However, DAHP noted that requiring formal education for medical assistants would impose a great cost on the individual. Consequently, physicians would have to pay more to hire MAs. A few people at the meeting expressed concern that MAs are performing duties that they are not competent to perform. However, DAHP noted that the supervising physician/podiatrist is ultimately responsible for the actions of the medical assistant. DAHP will incorporate comments into the draft regulations and publish a revised version at a future date.

The Quality of Medical Care in Nursing Homes. At DMQ's December meeting, Michael Cannon, principal staff consultant to the Little Hoover Commission, stated that a report of the Commission's findings and recommendations to improve the quality of nursing home medical care was expected in late January. BMQA has offered its assistance in implementing necessary actions. (For more information on the nursing home issue, see CRLR Vol. 8, No. 4 (Fall 1988) p. 58.)

LEGISLATION:

During the 1989 legislative session, DMQ plans to sponsor the following legislation: a bill to authorize DMQ to examine medical records of Medi-Cal patients in long-term care if there is reason to believe a physician care violation may affect other patients of the same physician; legislation to specifically provide immunity to expert witnesses who report unprofessional conduct to the Board; and a bill authorizing Board investigators to use hidden recording devices when conducting investigations.

RECENT MEETINGS:

At its December meeting, DMQ continued its discussion of coroners reporting to BMQA deaths which may be due to physician negligence or incompetence. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 61 for background information.) The coroners have requested statewide mandatory reporting requirements. Many of the MQRCs have been discussing the issue on a local level. A study group was formed to develop some reporting guidelines, which were scheduled to be presented at DMQ's March meeting.

At the same meeting, DMQ's Diversion Program reported that 205 physicians are currently enrolled. Of that total, the fifteen most recent enrollees include ten who have been successful in the program, and five who have failed.

At its December meeting, the DOL held a public hearing and approved amendment of section 1324(a), Title 16 of the CCR, which would make minor language changes and delete the requirement of a 70% occupancy rate for hospitals offering special PGT programs for foreign medical school graduates. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 63 for background information.) Also at the December meeting, the DOL discussed potential legislation to streamline the pathway to licensure for faculty appointments under sections 2113 and 2114 of the Business and Professions Code.

At its December meeting, DAHP continued discussion of the role of physician's assistants in nursing homes. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 61 for background information.) Physician's Assistant Examining Committee Executive Officer Ray Dale reported that since few physicians have practices in nursing homes, very few physicians are using physician's assistants in nursing homes. Although Medicare will reimburse for the use of physician's assistants in some circumstances, Medi-Cal will not. The PAs are seeking legislation to enable them to sign death certificates in nursing homes, and have formed a subcommittee to prepare a detailed report on this issue.

DAHP continued its discussion of proposed regulations previously adopted by the Acupuncture Examining Committee (AEC). Among the regulations reviewed was section 1399.451 of Chapter 13.7, Title 16 of the CCR, which currently requires acupuncturists to brush scrub their hands between patients. The AEC wants to delete that requirement from its regulations, contending that frequent brush scrubbing can cause chapping and irritation of the skin which would increase the danger of spreading disease. AEC favors washing with soap and warm water between patients. DAHP rejected this suggestion, expressing concern that any type of skin penetration is potentially dangerous, and health care workers are required to take appropriate precautions. DAHP maintained that brush scrubs have a soft side and do not necessarily cause skin irritation; DAHP also advocated the use of gloves.

FUTURE MEETINGS:

June 1989 (exact location and date to be announced).

September 14-15 in Sacramento.

ACUPUNCTURE EXAMINING COMMITTEE

Executive Officer: Jonathan Diamond
(916) 924-2642

The Acupuncture Examining Committee (AEC) was created in July 1982 by the legislature as an autonomous rulemaking body. It had previously been an advisory committee to the Division of Allied Health Professions of the Board of Medical Quality Assurance.

The Committee prepares and administers the licensing exam, sets standards for acupuncture schools, and handles complaints against schools and practitioners. The Committee consists of four public members and seven acupuncturists, five of whom must have at least ten years of acupuncture experience. The others must have two years of acupuncture experience and a physicians and surgeons certificate.

MAJOR PROJECTS:

Development of Appeals Procedures. AEC's Appeals Development Subcommittee met on October 18 to develop appeals guidelines for its practical examination. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 61 for background information.) At that meeting, the subcommittee formulated the following six guidelines: (1) the original rules of exam administration and grading procedures must remain unchanged to prevent unfair advantage; (2) allegations by the examinee of facts/events/occurrences must be corroborated; (3) in reviewing appeals, the Committee has pass/fail authority; (4) the closeness of the score to a passing grade is irrelevant to the merits of the appeal; (5) all decisions regarding appeals must be referred to the full Committee for approval unless that approval authority is previously delegated; and (6) for additional credit or points to be awarded, the impact of the disadvantage on the applicant's performance should be directly and causally related to an unfair loss of points.

At AEC's December 3 meeting, Executive Officer Jon Diamond stated that examinees could simply by notified of these guidelines for appeal of the practical exam and that the guidelines need not be formally adopted as regulations. Following discussion, these six guidelines will be redrafted and the issue will be taken up again at AEC's next meeting. The guidelines were based on and are similar to the appeals guidelines of the Board of Dental Examiners and the Board of Podiatric Medicine.

Continuing Education. AEC's Con-

tinuing Education Subcommittee recently researched the continuing education (CE) requirements of six other state agencies which license medical practitioners, and developed a new Continuing Education Provider Kit. The kit provides information to those wishing to become approved CE providers, and "reflects [AEC's] intentions and interpretations regarding continuing education requirements." In the kit, AEC stresses that it will not award CE credit for courses which emphasize methods in which the licensee can increase his/her income. The Committee also approved a motion that any part of a CE seminar which focuses on third-party reimbursement shall not be approved for CE units; any part which relates directly to medical practice shall receive units.

National Conference on Acupuncture Licensing. On February 10-11 in San Francisco, AEC sponsored a national conference for government officials involved with licensing acupuncturists. The agenda included a review of various state programs; minimum standards for acupuncture training and education, and school approval standards; enforcement and disciplinary issues (including advertising and scope of practice); written and practical examination standards and development; evaluation of foreign credentials; and a review of national standards, issues, and organizations.

Regulation Changes. At its January 1988 meeting, AEC adopted changes to sections 1399.425, 1399.426, and 1399.436, Title 16 of the California Code of Regulations (CCR), on the training of acupuncturists. On October 11, the proposed changes were rejected by the Office of Administrative Law (OAL) because they failed to meet the clarity standard. Section 1399.426 would have required a supervising acupuncturist to file a quarterly progress report "on a form provided by the committee." OAL found that because supervising acupuncturists cannot tell from the regulatory language what information is required of them on the form, the language lacks the clarity required by Government Code section 11349(c).

Section 1399.436 would have established criteria for approval by AEC of training programs for acupuncturists. Subsection (g), which recognizes out-of-state institutions accredited by a regional accrediting agency, lists educational institutions in which a training program for acupuncturists "should" be located. OAL found that the use of the verb "should" makes it difficult to understand whether the location provision is or is not a criterion which must be satisfied for the approval of the training program.

AEC's proposed amendment to section 1399.436(l) would have provided that out-of-state training programs shall be accredited within a five-year period after AEC approval using specified standards. However, OAL found that the text of this section fails to state whether the five-year time limit applies to accreditation of an out-of-state training program, nor does it state a consequence for the failure of an out-of-state program to satisfy the time limit.

RECENT MEETINGS:

During its December 3 meeting, AEC held a public hearing regarding the proposed addition of regulatory section 1399.457, Title 16 of the CCR, which would require that an acupuncturist using the initials "OMD" must follow those initials with the term "Acupuncturist", "Licensed Acupuncturist", or "Certified Acupuncturist". (See CRLR Vol. 8, No. 3 (Summer 1988) p. 65 for background information.) AEC is considering whether to let BMQA's Division of Allied Health Professions attempt to push this regulation through since it is in a better position to handle any confrontations with the California Medical Association, which opposes the proposed regulation. The hearing was deferred until AEC's next meeting; the public comment period on this issue was also extended.

FUTURE MEETINGS:

April 8 in Sacramento.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Margaret J. McNally (916) 920-6377

The Board of Medical Quality Assurance'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. Pursuant to SB 2250 (Rosenthal) (Chapter 1162, Statutes of 1988), the Committee 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.

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:

Assistive Listening Devices. On November 4, HADEC held an assistive listening device (ALD) workshop. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 62 for background information.) The purpose of the workshop was to receive shared input from industry, physicians, and fitters on whether ALDs fit within the definition of a hearing aid. At HADEC's June 1988 meeting, Committee member Knox Brooks had stated that many ALDs fit California's statutory definition of a hearing aid (such that individuals who dispense them must be licensed by HADEC), and the fact that they are termed ALDs rather than hearing aids does not alter that fact. HADEC is concerned about protection of the consumer against ALDs which may not come within the definition of hearing aids but which could cause public harm. A report on this project is expected in early 1989.

Regulation Change. During 1988, HADEC received a letter from Senator Montoya expressing his concerns regarding section 1399.119(d) of HADEC's regulations, which appear in Chapter 13.3, Title 16 of the California Code of Regulations. The section currently requires 100% supervision of temporary licensees who have failed either the written or practicum section of HADEC's licensing examination. At its November 5 meeting, HADEC approved draft language which would amend section 1399.119(d) to require 100% supervision only for candidates who fail the practicum or who fail the written exam more than once. Those who have failed the written exam once would be required to have the minimum 20% supervision under section 1399.119(a). Thus, a trainee-applicant could continue for one more exam cycle (typically four to six months) to fit or sell hearing aids if he/she passes the practicum. HADEC will formally propose this regulatory change in the near future.

HADEC's Goals and Objectives. At its November 5 meeting in Monterey, HADEC discussed its goals for 1989. HADEC is conducting an exam validity review which should be completed in June. The Committee is also working on publishing a consumer information brochure (if funds permit) and develop-

ing a citation and fine program through rulemaking.

LEGISLATION:

During 1989, HADEC will propose an amendment to section 3356 of the Business and Professions Code. Section 3356 allows a person who has been "engaged in fitting and selling hearing aids" in another state for a period of two years within the five-year period immediately prior to application to receive a temporary California license. HADEC has received numerous consumer complaints about such temporary licensees. In one case, the temporary licensee failed the qualifying examination yet supervised a trainee. In order to prevent these complaints and potential harm, HADEC will propose that section 3356 be amended to require that an applicant for temporary license be licensed in the other state. Therefore, those practicing in other states which do not require licensing may not receive temporary California licenses without meeting the requirements of section 3357.

RECENT MEETINGS:

At its November 5 meeting in Monterey, the Committee reviewed the October 1988 exam and made various suggestions regarding a timeframe for pass/fail notifications for the exam. The Committee changed its policy and has decided to give pass/fail notification within 48 hours of the exam by mailing a card to the applicant.

Also at the meeting, Department of Consumer Affairs counsel Greg Gorges reviewed HADEC's responsibility and procedure under SB 2250 (Rosenthal), which authorizes HADEC to hear and prosecute cases involving violations of the law relating to hearing aid dispensing.

FUTURE MEETINGS:

To be announced.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Don Wheeler
(916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 10,500 physical therapists. The Committee is comprised of three public and three physical therapist members.

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.

The Committee recently appointed its licensing clerk, Rebecca Marco, as Acting Committee Program Manager during Executive Officer Don Wheeler's convalescence. At its December meeting, PTEC elected James Sibbett, PT, as Committee Chair for 1989; public member Mary Ann Mayers was chosen Vice-Chair.

MAJOR PROJECTS:

Regulations. PTEC's March 1988 adoption of amendments to its regulatory sections 1399.54, 1399.55, and 1399.61(c), regarding electromyography certification fees, renewal schedules, and reexamination procedures for applicants for kinesiological electromyography or electroneuromyography certification, were recently disapproved by the Office of Administrative Law (OAL). OAL said the changes failed to comply with the necessity, clarity, and consistency standards of the Administrative Procedure Act. OAL approved the repeal of section 1399.55, Title 16 of the California Code of Regulations. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 62 and Vol. 8, No. 3 (Summer 1988) p. 67 for background information on these regulatory changes.)

PTEC has also proposed changes to sections 1399.25-1399.29. These modifications would implement a citation and fine program pursuant to section 125.9 of the Business and Professions Code, to penalize violations of the Physical Therapy Practice Act. PTEC held a public hearing on these proposed amendments in January 1988 (see CRLR Vol. 8, No. 2 (Spring 1988) pp. 65-66 for background information); its first submission of these regulations was sent back by OAL because of lack of specificity and clarity. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 62.) PTEC's counsel has made the suggested changes, and has resubmitted the sections to OAL for its approval.

LEGISLATION:

Anticipated Legislation. At PTEC's December meeting, Department of Consumer Affairs counsel Greg Gorges suggested a 1989 PTEC fee bill which would separate the exam fee from the application fee. This proposal would enable the Committee to adjust its exam fee whenever the exam contractor changes its fee. Currently, the cost of the exam to an applicant is included in the application fee.

LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n, et al. v. Board of Chiropractic Examiners* (consolidated case Nos. 35-44-85 and 35-24-14), the Sacramento Superior Court recently entertained motions for summary judgment and for summary adjudication filed against the Board of Chiropractic Examiners (BCE) by BMQA/PTEC and the California Medical Association (CMA). (See CRLR Vol. 8, No. 4 (Fall 1988) p. 63; Vol. 8. No. 3 (Summer 1988) p. 67; and Vol. 8, No. 2 (Spring 1988) p. 66 for background information on this lawsuit.) In a ruling issued January 5, the court denied both motions for summary judgment. However, the court granted the BMQA/PTEC motion for summary adjudication on issues relating to the proper scope of chiropractic practice, and also granted CMA's motion on the issue of its standing to pursue the action. BCE planned to appeal these two rulings by way of peremptory writ to the court of appeals by February 1. The superior court will hold a status hearing in the case on March 27.

This lawsuit has cost BMQA and PTEC $90,000 so far. PTEC is paying 14% of that amount; BMQA is paying the rest. This percentage was established based on the ratio of PTEC members to BMQA members. This money comes directly out of PTEC's enforcement budget, leaving the Committee concerned that its enforcement efforts will be hamstrung due to lack of funds.

RECENT MEETINGS:

At its December meeting, PTEC discussed the implementation of SB 645 (Royce) by BMQA's Division of Allied Health Professionals (DAHP). The statute authorizes DAHP to adopt regulations defining the services permitted to be performed by medical assistants. PTEC is concerned that medical assistants will be authorized to perform difficult physical therapy modalities. PTEC plans to provide extensive commentary throughout DAHP's rulemaking process. (For more information on this issue, *see supra* agency report on BOARD OF MEDICAL QUALITY ASSURANCE.)

PTEC has contracted with a new service to administer its licensure exam as of August 1989. The new service is Assessment Systems, Inc., of Philadelphia.

In its November exam, PTEC included an opportunity for exam takers to objectively critique and evaluate the exam questions administered by the previous contractor. The Committee wanted input on the questions in order to assist with future exam preparation. Approximately sixty people responded to the questions; PTEC members were pleased with this number, and will continue the procedure indefinitely.

At both the October and December meetings, Morris Sasaki, PT, presented a proposal on behalf of a consortium of southern California hospitals to administer the PT licensing exam overseas to foreign-trained physical therapists. The test would be the same as that given in California and would be given in English. The consortium would cover any discrepancy between the cost of administering the exam overseas and the application fee. PTEC is aware of the severe shortage of qualified PTs in California, and gave approval for the foreign administration of the licensing exam contingent upon the appropriate scheduling of dates and locations.

At its December meeting, the Committee discussed the possibility of instituting a program to monitor and rehabilitate drug/alcohol-impaired physical therapists. The Physician's Assistant Examining Committee has recently instituted such a diversion program, and PTEC staff was directed to investigate the possibility of developing a similar program.

FUTURE MEETINGS:

May 12 in Sacramento.
July 28 in San Francisco.
October 5 in San Diego.
December 7 in Sacramento.

PHYSICIAN'S ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The legislature established the Physician's Assistant Examining Committee (PAEC) 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 the 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 nine members include one member of the Board of Medical Quality Assurance (BMQA), 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 BMQA, three PAs and two public members.

MAJOR PROJECTS:

Attorney General Opinion 88-303. In an effort to define the scope of practice of PAs, and due to conflicts between PAs and nurses over their respective duties, the PAEC recently requested an opinion from the Office of the Attorney General. Specifically, the PAEC asked the AG to issue an opinion on eight questions. Five of them focused on situations in which a PA may "initiate" or "transmit" orders on or behalf of the supervising physician. The rest concerned details relating to those issue, namely the conditions surrounding the initiation or transmission of orders by a PA.

As background information, the opinion issued on November 3 describes the creation of the PA category for the purpose of "encouraging the more effective utilization of the skills of physicians by enabling them to delegate health tasks to qualified PAs." The Board of Medical Quality Assurance is authorized to promulgate regulations governing the scope of PAs' practice. The questions posed by the PAEC required the AG to interpret those regulations. As a qualifier, the AG stated that the opinion is purposely conservative in order to follow legislative intent; that is, to defer to the expertise of the medical profession in establishing the scope of PA practice. If the medical profession believes the AG's interpretation of the regulations is too narrow, it (through BMQA) may simply amend those regulations.

The AG concluded that PAs may not initiate an order for routine laboratory tests, routine diagnostic radiological services, therapeutic diets, physical therapy treatments, occupational therapy treatments, or respiratory care services. The Office premised its conclusion on the language in the PAs' regulations adopted by BMQA, sections 1399.500-.556 of Chapter 13.8, Title 16 of the California Code of Regulations. The phrase "assist the physician" in section 1399.541(f) was interpreted to mean that the role of the PA is always secondary to that of the supervising physician. Any "initiation" of orders by a PA would impermissibly replace (not "assist") the physician in determining treatment for a patient.

The PAEC believes that this interpretation of the regulations is unduly strict. Specifically, such an interpretation of the term "initiate" effectively turns the PA into a "gopher" for the physician. It defeats the intent behind the creation of the PA as a health care provider, and disallows a measure of independence in certain non-life-threatening health care situations.

The AG also concluded that where emergency care is beyond the PA's scope of practice, a PA may not lawfully initiate or transmit the order of a supervising physician to others for life-saving treatment. However, a PA may transmit and in some cases implement transport backup procedures for the immediate care of patients pursuant to written procedures established by the supervising physician. The problem with this conclusion, as articulated by PAEC's legal counsel Greg Gorges, is that it means a PA may take emergency action him/herself, but may not order any other person to administer immediate life-saving care.

Regarding routine nursing services, the AG stated that section 1399.541 authorizes a PA to transmit certain orders of a supervising physician to a nurse, but may not initiate such orders. Similarly, a nurse who is the recipient of an order from a PA only has legal authority to carry out such order if it originates with a physician, according to the opinion. Also, the PA may transmit these orders in the institutional setting, but not elsewhere. Again, the Committee believes that this interpretation of the regulation "undercuts protocol and the purposes of PA practice." It prevents PAs from requesting a nurse to even order a simple blood test or dispense a prescription, unless the order came directly from a physician.

Finally, the AG determined that any orders which a PA may lawfully initiate or transmit may be performed without a protocol or countersignature of the supervising physician. Section 1399.545(e)

provides four alternative mechanisms through which the physician may supervise the PA.

At this writing, the Committee has issued only an oral response to the opinion, which in sum informs concerned PAs that the PAEC disagrees with certain portions of the AG's opinion, and that it will take steps to affirm that PAs have a certain amount of autonomous authority. Such steps may include clarifying the regulations through amendments, which necessarily involves enlisting and obtaining the support of BMQA's Division of Allied Health Professions. PAEC believes that a legislative solution should not be pursued, as it would be too difficult.

LEGISLATION:

During the 1989 legislative session, the PAEC will seek a sponsor for a bill to amend existing law and allow the Committee to decide the appropriate ratio of PAs per supervising physician. Existing law requires one supervising physician for every two PAs in the workplace. The PAEC believes that this law prevents PAs from being used in an optimum fashion, and will seek the authority to use its discretion to consider many factors in determining whether a certain setting is appropriate for a different physician/PA supervision ratio.

The Committee will urge the California Association of Physician Assistants (CAPA) to pursue legislation to clarify the status of PAs regarding "good samaritan" acts. It is unclear whether a PA who acts as a good samaritan (that is, one who aids victims outside the institutional setting in an emergency situation) would be covered under his/her supervising physician's coverage or exemption from liability. PAEC member Robert Bonacci volunteered to serve as a liaison with Assemblymember Maxine Waters to attempt legislation in this area. CAPA may also sponsor legislation to give PAs the authority to sign death certificates and to perform Department of Motor Vehicle physicals. The Committee believes that such authority would be consistent with the functions of PAs, as well as serving to free physicians to perform tasks outside the scope of PA practice.

Finally, a minor statutory change will be sought, possibly through the Department of Consumer Affairs' omnibus bill. This amendment would drop the "'s" from the term and title "physician's assistant," thus changing PAEC's name to "Physician Assistant Examining Committee."

RECENT MEETINGS:

A new member of the Committee was introduced at the October meeting. She is Dr. Schumarry Chao, medical director of the student health center at the University of Southern California. Business at the meeting included a public hearing and action on a proposed regulatory amendment to section 1399.508 (see CRLR Vol. 8, No. 4 (Fall 1988) p. 63 for background information). This noncontroversial change, which was approved unanimously, requires that an applicant for PA licensure practicing under interim approval must complete the licensure process within ninety days after release of exam scores.

The PAEC's November meeting featured the election of officers for 1989. Janice Tramel was unanimously approved for another year as Chairperson. The new Vice-Chairperson will be Dr. Nancy B. Edwards, who has been a Committee member for the past year.

The Committee also discussed its implementation of AB 4510 (Waters), which requires PAEC to create a substance abuse diversion program for PAs. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 63; Vol. 8, No. 2 (Spring 1988) p. 68; and Vol. 8, No. 1 (Winter 1988) pp. 59 and 63 for background information.) PAEC's executive and budget subcommittees will study possible contracts with existing state or private programs in order to best facilitate starting such a program for PAs.

FUTURE MEETINGS:

April 14 in Palm Springs.
June 23 in San Diego.

BOARD OF PODIATRIC MEDICINE

Executive Officer: Carol Sigmann
(916) 920-6347

The Board of Podiatric Medicine (BPM) of the Board of Medical Quality Assurance (BMQA) regulates the practice of podiatric medicine in California. The Board licenses doctors of podiatric medicine (DPMs), administers examinations, approves colleges of podiatric medicine (including resident and preceptorial training), and enforces professional standards by disciplining its licensees. BPM is also authorized to inspect hospital records pertaining to the practice of podiatric medicine.

The Board consists of four licensed podiatrists and two public members.

MAJOR PROJECTS:

License Renewal Fee Bill. The Board recently expressed concern over the legislature's treatment of its 1988 fee bill, AB 4542 (Johnson, Zeltner). (See CRLR Vol. 8, No. 4 (Fall 1988) p. 64 for background information on this bill.) In the bill, the Board had requested an increase in its biennial renewal fee from $525 to $650. BPM justified its proposed increase on the statutory requirement under section 5681 of the Business and Professions Code that it have three months' worth of operating expenses in its reserve fund at the start of any new fiscal year. Without the requested increase, BPM's reserves in July 1990 are projected to cover only 1.94 months. However, after applying new fee increase justification criteria to AB 4542, the Senate Business and Professions Committee rejected the proposed increase.

On October 28, the Committee held an interim hearing on its new criteria (which any board requesting a fee increase must satisfy). In his remarks to the Committee, BPM President Dr. William Landry, DPM, noted that BPM "does understand and support the idea that a thorough cost analysis must be done in order to justify significant fee changes." He went on to say that "the Board also believes that there should be sufficient latitude built into the fees to allow for necessary administrative cost adjustments, which would otherwise be done by regulation."

According to BPM Executive Officer Carol Sigmann, BPM will be unable to restore its fund reserves to their required level as a result of the Committee's action. BPM's relatively small licentiate population renews its licenses biennially by birthdate. With so few members renewing licenses over the course of two years, the result is a slowly progressing fund development to restore what has been spent. If BPM's licensee population were significantly larger or if all licentiates renewed on the same date, the needed balloon payment to restore the BPM coffers would be available. Sigmann also pointed out that renewal fees are the only fees which support BPM's enforcement program; thus, the only way BPM can satisfy its July 1, 1990 requirement is to drop its enforcement program or increase renewal fees. Of course, BPM will continue its enforcement program; but, according to Sigmann, "in order to meet the three-month reserve requirement by July 1990, renewal fees will have to be increased to $700-800, rather than the $650 we originally requested."

LEGISLATION:

BPM will watch several legislative proposals during the 1989 legislative session. The following are currently pending in BMQA's Division of Medical Quality:

-Legislation to authorize the Division of Medical Quality to examine medical records of Medi-Cal patients in long-term care if there is reason to believe that a physician's care violation may affect other patients of the same physician.

-Legislation to specifically provide immunity to expert witnesses who report unprofessional conduct to BMQA. BPM would like to see immunity expanded to include those professionals who testify about unprofessional conduct of colleagues.

RECENT MEETINGS:

At its December 9 meeting in Los Angeles, BPM reviewed test results from the November 1988 licensing examination. The overall examination passage rate was 78%. While slightly lower than the spring passage rate of 84%, the results are still within acceptable limits.

Also at the December meeting, BPM decided to delay a formal response to proposed regulations defining the technical supportive services which may be performed by medical assistants until BMQA's Division of Allied Health Professions releases a new draft. The Board wants to ensure that the draft regulations reflect consistent application when referencing podiatrists and physicians. DAHP is authorized to promulgate the regulations pursuant to SB 645 (Royce) (Chapter 666, Statutes of 1988). (For more information on this issue, *see supra* agency report on BOARD OF MEDICAL QUALITY ASSURANCE.)

The Professional Practice Committee report included a review of BPM's most recent Expert Training Workshop held in Los Angeles. BPM's enforcement program includes a rather unique effort to train podiatrists as competent experts to represent consumers at administrative disciplinary hearings. The eight selected podiatrists learned from Anne Mendoza of the Attorney General's office and others what is required from medical experts when they testify at the administrative hearings. The workshop, complete with orientation manual and exercises in report writing, will be repeated in northern California in spring 1989.

At the same meeting, BPM agreed that its first annual newsletter will be ready for publication in 1989. The purpose of the newsletter is to educate BPM's licentiates on various topics, including rules and regulations affecting their California practices. The BPM newsletter will also inform podiatrists about the workings of the enforcement program, the newly implemented Diversion Program available in January 1989, as well as BPM's past policy decisions. Review of a general newsletter format is slated to take place at the March meeting.

No action was taken on the question whether to delete BPM's mandatory CPR requirement for license renewal because of the possibility of contracting the AIDS virus during CPR training sessions. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 65 for background information.) The issue was deferred pending BMQA's consideration of reinstating the CPR requirement it deleted in 1985.

FUTURE MEETINGS:

June 9 in San Diego.
September 22 in San Francisco.

PSYCHOLOGY EXAMINING COMMITTEE

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

The Psychology Examining Committee (PEC) is the state licensing agency for psychologists. PEC sets standards for education and experience required for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, conducts disciplinary hearings, and suspends and revokes licenses. PEC is composed of eight members, three of whom are public members.

MAJOR PROJECTS:

Proposed Regulations for Alcohol and Chemical Dependency Training. The PEC was scheduled to conduct a hearing on January 27 in Millbrae on a proposed regulation concerning required training in alcohol and chemical dependency detection and treatment. New section 1387.6, Chapter 13.1, Title 16 of the California Code of Regulations, would set forth the course criteria satisfactory to the PEC. The training requirement would be satisfied with a graduate level semester course which is devoted solely to the topic of alcoholism and chemical dependency detection and treatment and which includes training in the following subjects (among others): evaluation of the user, theories of substance abuse, the physiological and medical aspects of substance abuse, the interaction of various classes of drugs and alcohol, legal aspects of substance abuse, and diagnoses and referral of patients.

Proposed Fee Increases. The PEC has proposed two amendments to section 1392 of its regulations: (1) an increase in the fee for a licensure examination from $100 to $150, effective October 1, 1989; and (2) establishment of a $40 fee for biennial renewal of an inactive license. The Committee was scheduled to hold a public hearing on these proposed amendments on February 25 in San Francisco.

Disapproval of Regulations Regarding Psychological Assistants. In late September, the Office of Administrative Law (OAL) disapproved PEC's proposed regulatory sections 1391.1 and 1391.10 due to lack of clarity. The regulations would have required supervisors of psychological licensure applicants and psychological assistants to have three years of post-licensure experience and would also have prescribed additional reporting and supervisory requirements. OAL found that the proposed regulations failed to advise supervisor applicants of the precise information which must be disclosed. The PEC has made minor changes to the regulations and resubmitted them to OAL.

LEGISLATION:

During the 1989 legislative session, Assemblymember Margolin is scheduled to introduce a bill that would change the name of the PEC to the Board of Psychology.

RECENT MEETINGS:

The Committee is attempting to develop legislation that would restrict social relationships between a therapist and his/her client. Because this area is extremely complicated, it will be difficult not to draft legislation so broad that it will prohibit conduct which should not be prohibited, or so limited that it fails to adequately address areas of abuse. As an alternative to statutory prohibitions, the Attorney General's Office has suggested mandatory coursework or education on prohibited dual relationships as a prerequisite for licensure or relicensure.

FUTURE MEETINGS:

March 17-18 in San Diego.
May 12-13 in Los Angeles.
July 21-22 in San Francisco.

SPEECH PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards
(916) 920-6388

The Board of Medical Quality Assurance's Speech 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.

MAJOR PROJECTS:

Speech Pathology and Audiology Aide Regulations. SPAEC's proposed changes to regulatory sections 1399.170, 1399.171, 1399.172, 1399.174, 1399.175, and 1399.176 were scheduled to be submitted to the Office of Administrative Law for review in mid-December. The new regulations will impose stricter requirements regarding registration, supervision, and training programs for speech pathology and audiology aides. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 66 and Vol. 8, No. 3 (Summer 1988) pp. 70-71 for background information.)

Impedance Testing and Hearing Aid Dispensers. At the Committee's November 4 meeting, SPAEC Chair Dr. Philip Reid appointed Ellen Rosenblum-Mosher and Gail Hubbard to an ad hoc committee composed of two members of SPAEC and two members of the Hearing Aid Dispensers Examining Committee. The committee was formed at Dr. Reid's suggestion to consider whether a procedure known as tympanometry is restricted to audiologists or may be performed by hearing aid dispensers. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 66 for background information.)

LEGISLATION:

While no definite plans for 1989 legislation have been established, the Committee is considering sponsoring legislation to require continuing education for speech pathologists and audiologists.

RECENT MEETINGS:

On November 4 in Monterey, Dr. Reid reported on his attendance at the annual meeting of the National Council of State Boards for Speech Pathologists and Audiologists recently held in Washington, D.C. Highlights of this meeting included a report and discussion on the recent controversy concerning the use of support personnel for speech pathologists and audiologists. Trends regarding supportive personnel range from states which allow very loose control to other states, including California, which advocate very tight controls. A major speech was given at the Washington meeting advocating continuing education (CE) as a necessity for speech pathologists and audiologists. Dr. Reid distributed a chart indicating that seventeen states now have mandatory CE requirements, while an additional five have enabling legislation allowing the licensing board to adopt CE requirements through regulation.

FUTURE MEETINGS:

April 7 in Sacramento.
June 30 in Los Angeles.
September 8 in San Jose.
November 10 in San Diego.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel
(916) 445-8435

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. 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. 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:

Implementation of AB 1834. BENHA continues to work towards compliance with the requirements of AB 1834 (Connelly). (For details on AB 1834, see the implementation plan outlined in CRLR Vol. 8, No. 4 (Fall 1988) p. 67; see also CRLR Vol. 8, No. 2 (Spring 1988) p. 69; and Vol. 8, No. 1 (Winter 1988) pp. 66-67.) Four new cases have been referred from the Department of Health Services (DHS) in 1988, making a total of seven active disciplinary cases. Executive Officer Ray Nikkel reports that DHS has informed him that three new cases will be referred in the near future.

Also pursuant to AB 1834, BENHA has published a list of all administrators who have had their licenses placed on probation, suspended, or revoked during the previous three-year period. The list includes administrators who stipulate to agreements, including temporary suspension of their license.

RECENT MEETINGS:

At BENHA's December 1 meeting in Sacramento, the Education Committee submitted an outline for study of BENHA's administrator-in-training program and its continuing education requirements. These studies are also related to AB 1834 implementation. BENHA was to have submitted a report to the legislature on the progress of these study topics no later than December 31, 1988.

FUTURE MEETINGS:

To be announced.

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger
(916) 739-4131

The Board of Optometry establishes and enforces regulations pertaining to the practice of optometry. The Board is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board's goal is to protect the consumer patient who might be subjected to injury resulting from unsatisfactory eye care by inept or untrustworthy practitioners.