



on the draft regulations has not been established at this writing.

LITIGATION:

In *People v. Delta Enterprise Corp.*, No. 360059 (Sacramento County Superior Court), a final judgment was entered in October 1988. Civil penalties of \$2,500 were assessed against Delta, a New York corporation, in this action enforcing state labeling and flammability requirements. Injunctive relief was also awarded, including an order to comply with a mandatory quality control program. The Bureau was awarded its investigative costs.

RECENT MEETINGS:

At its March 7 meeting in Sacramento, Chief Damant distributed the Governor's 1989-90 proposed budget, which includes funding for three of the six new positions requested by the Bureau. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 57 for background information.) An additional laboratory technician for the Home Furnishings Program and two inspectors for the Insulation Program were tentatively approved. Requests for an administrative assistant to the Bureau chief, a laboratory assistant, and a chemist were denied.

Due to the passage of AB 4007 (Lancaster) in 1988, the Bureau plans to propose amendments to its regulations to change the use of the term "sterilization" to the term "sanitization." The proposed regulations would also eliminate the requirement of using formaldehyde to properly sanitize products. Sanitization is currently achieved using formaldehyde and high-heat sterilizing "ovens". The Bureau is evaluating alternatives to formaldehyde while still using the sterilizing ovens.

FUTURE MEETINGS:

June 13 in San Diego.
September 12 in San Francisco.
December 5 in Los Angeles.

BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode
(916) 445-4954

The Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. To qualify for a license, an applicant must successfully pass the written exam of the national Council of Landscape Architectural Registration Boards (CLARB), an additional section covering landscape architecture in Cali-

fornia, and an oral examination given by the Board. In addition, an applicant must have the equivalent of six years of landscape architectural experience. This may be a combination of education from a school with a Board-approved program in landscape architecture and field experience.

The Board investigates verified complaints against any landscape architect and prosecutes violations of the Practice Act. The Board also governs the examination of applicants for certificates to practice landscape architecture and establishes criteria for approving schools of landscape architecture.

BLA consists of seven members. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licentiates of the Board. Board members are appointed to four-year terms.

LEGISLATION:

SB 572 (Bergeson) is a Board-sponsored bill which would amend sections 5651, 5661, and 5681 of the Business and Professions Code. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 50 for background information.) Section 5651 currently requires all applicants for BLA licensure to pass both a written and an oral exam. This bill would amend section 5651 to eliminate the oral examination for instate applicants. Questions currently used in the oral exam would instead be included in the written exam. The elimination of this portion of the licensure procedure is expected to save the Board \$2,000 per year.

The legislation would also extend the statute of limitations for filing accusations against landscape architects. Section 5661 requires that all accusations against landscape architects be filed within two years after the act or omission alleged as grounds for disciplinary action. This bill would extend the limitations period to three years after discovery of the act or omission by the Board or within six years after the act or omission, whichever is first.

Section 5681 currently sets forth the Board's fee ceilings. This bill would add a provision authorizing a fee for the approval of schools of landscape architecture. Under current law, the Board is authorized to approve two types of land-

scape architecture schools—four-year programs and two-year programs. The four-year programs are approved by an independent third party on a national level, and these findings are usually accepted by the Board. The Board is empowered to conduct site visits to the two-year institutions for accreditation purposes; however, thus far the Board has lacked the funds to do so. The proposed fees assessed to the schools would help to alleviate budgetary constraints in connection with school approval. SB 572 is pending in the Senate Business and Professions Committee at this writing.

AB 848 (Bentley) would add the services of a landscape architect to the list of professions which may be granted contracts by state and local agencies based upon demonstrated competence qualifications rather than competitive bidding. Existing law contains similar provisions for architectural, engineering, land surveying, and construction management services. This bill is pending in the Assembly Ways and Means Committee.

FUTURE MEETINGS:

To be announced.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Director: Ken Wagstaff
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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



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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. The outstanding backlog of complaint processing and investigative cases claimed DMQ's attention at the March meeting. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 50-51 for background information.) As of December 1988, approximately 789 complaints had not yet been assigned for investigation. Of the 789 complaints not assigned, 80% were characterized by DMQ Enforcement Chief Vern Leeper as complaints involving a potential for patient harm or needing additional information before a case disposition decision could be made. About 65% of these cases with a potential for patient harm have been unassigned for a minimum of three to six months.

In an effort to cope with the increasing workload, DMQ adopted Leeper's

reprioritization policy. (See *supra* FEATURE ARTICLE for background information.) The adopted policy redefines priorities which are assigned to incoming patient complaints and investigations so staff can determine whether to investigate formally, informally, or not at all.

Under the new system, Priority 1 cases are those which demonstrate actual or high potential for patient harm. The less severe Priority 2, 3, and 4 cases, including complaints which may or may not involve potential patient harm, will be handled by consumer services representatives, medical consultants, and investigators. Priority 3 and 4 complaints related to lesser quality of care issues and violations of the Medical Practice Act will be handled with informational and warning letters to the offending physician. Unfortunately, only 20% of the current backlog consists of these "less serious" complaints. The remaining 80% of complaints with potential patient harm remain in the hands of overburdened enforcement staff. Currently, DMQ investigators carry two to three times the caseload of any state agency investigating consumer complaints.

DMQ hopes to accomplish three major objectives with its reprioritization policy: (1) achieve timely completion of investigations with serious patient care allegations; (2) emphasize early intervention on practice problems by less formal or more streamlined investigations; and (3) adopt target dates of 30 days to initiate investigations and 180 days to complete them.

The Quality of Medical Care in Nursing Homes. At DMQ's March meeting, Jeannine English, Executive Director of the Little Hoover Commission, and Commission principal staff consultant Michael Cannon presented an overview of findings and recommendations following a recent study on medical care of nursing home residents. (See *supra* agency report on LITTLE HOOVER COMMISSION for complete summary of this report; see also CRLR Vol. 8, No. 4 (Fall 1988) p. 58 for background information.) The Commission was appalled to find BMQA "singularly inactive [in this area], having neither adopted standards of care for nursing homes nor instituted a fine and citation system for those who fail to provide adequate care."

The Commission called particular attention to the absence of available qualitative and quantitative data on medical care in nursing homes. "[I]t is, in itself, one distressing indicator of the low priority which this issue had had for both

the Licensing and Certification Division and for BMQA...[t]here is virtually no quantitative data available from either BMQA or from the Licensing and Certification Division concerning physician performance and behavior in nursing homes." The absence of data on physician competence and nursing home patient complaints is the result of "sustained inattention" by BMQA, coupled with the lack of any requirement that BMQA oversee professional behavior of physicians who visit nursing home patients.

In response, DMQ noted that several Commission recommendations were originally made by BMQA. However, the biggest issue for DMQ was inadequate reimbursement for nursing home patient visits. Currently, physicians are MediCal-reimbursed for one patient visit per month. The Commission acknowledged that reimbursement for providers is of major importance. The Commission, however, "rejects the view that the central impediments to increasing the quality of medical care, or, indeed, the quality of long term care in general, are, first and foremost, increased payments to physicians...[t]here is no intuitive reason to believe that were physicians to be reimbursed incrementally more for working with long-term care residents that such an increment would, in turn, lead to improved quality of medical care for those nursing home residents."

Site Visit Report. The draft site visit report on foreign medical education, approved at DOL's December meeting, contained recommendations to increase the required number of postgraduate training (PGT) years from one to three, and to consider a competency examination for all those in PGT. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 51 and Vol. 8, No. 4 (Fall 1988) p. 59 for background information.) At DOL's March meeting, a memo from former Board member and consultant Dr. Lindy Kumagai indicated that a standardized, reliable clinical competency examination will not be available for several years, making this proposed requirement impractical. However, a three-year PGT requirement appears to have some support from the California Medical Association (CMA), and would enable DOL to avoid the problem of approving individual foreign medical schools.

An increased PGT requirement for licensure would affect the number of residents in training who are authorized to write prescriptions and sign death certificates. Kumagai suggested that qualified individuals might receive a "certificate of registration" which would



permit them to perform certain physician tasks. Many in PGT who "moonlight" outside the PGT program also would need some kind of license to continue any employment as physicians.

The DOL voted to approve the draft report to the legislature with the recommendation to increase the required PGT to three years for all medical graduates, but to omit discussion of the clinical competency examination from the report.

A change in the PGT licensure requirement would require legislative action. Counsel Greg Gorges indicated that any "certificate" process would have a broad impact on existing statutes which reflect licensure status and would need careful study. DOL will work with the Board's Legislation Committee to find a representative to introduce legislation increasing the required PGT to three years.

Section 1324 Training Programs. At the March meeting, a representative from CMA's Committee on Medical Schools criticized the physician training programs approved by DOL under section 1324, Title 16, California Code of Regulations (CCR). The section 1324 programs are individually evaluated by DOL, as contrasted with the majority of PGT programs which are approved under the rigorous standards of the national Accreditation Council for Graduate Medical Education (ACGME).

According to CMA, the section 1324 programs are objectionable for three reasons: (1) they create a dual quality standard—section 1324 programs have no written standards while ACGME has well-defined criteria; (2) section 1324 programs offer insufficient training, yet an applicant will pay as much as \$35,000 for a position; and (3) no demonstrated need exists for section 1324 programs—citing a physician oversupply in California, the legislature and the AMA's Liaison Committee on Medical Education (LCME) have urged a reduction in the number of PGT positions at hospitals. Dr. Kumagai also warned DOL about the dangers of setting itself up as an accreditation agency for section 1324 training programs. CMA requested that the section 1324 programs be phased out.

In response, DOL members stated that only a small number of section 1324 programs are still in existence, and that they serve foreign medical graduates who are excluded from ACGME programs. A discussion of section 1324 programs was placed on DOL's agenda for the June meeting.

Role of DOL Committees. At DOL's March meeting, Department of Consum-

er Affairs counsel Greg Gorges responded to DOL member Dr. J. Alfred Rider's question as to why all DOL members may not serve on DOL's Application Review Committee.

The Division's Application Review Committee (a panel of four DOL members which reviews applications for licensure which are not routine and which staff is not able to handle) and its Special Programs Committee (another panel of four DOL members which reviews all applications for fellowships, registration of faculty members, special clinical training programs, and hospitals for undergraduate clinical training) were created in March 1987 to replace the Division's former "Credentials Committee". (See CRLR Vol. 8, No. 2 (Spring 1987) p. 61 and Vol. 8, No. 1 (Winter 1987) p. 59 for background information.) Both committees meet in closed session to discuss cases referred to them by staff, and report statistical results at the next open session. The split of the Credentials Committee into two separate committees was intended to alleviate DOL members' concerns about personal liability for decisions they took no part in making. Licensing decisions made by the two new committees are intended to be final; the entire Division does not ratify the decisions of the individual committees.

Dr. Rider, currently a member of the Special Programs Committee, expressed concern about the possibility of being held liable for the decisions of the Application Review Committee. Both Dr. Rider and DOL public member Audrey Melikian stressed that they "have absolutely no feel as to what the Division is doing regarding licensing now, and no idea what decisions and exceptions are being made." Dr. Rider expressed his desire either to be on the Application Review Committee, to be at the meetings of that committee so he would have more information on the decisions being made, or to receive more information at DOL's open sessions (rather than mere statistical information), so that he could intelligently vote to approve that committee's decisions.

Counsel Gorges reminded Dr. Rider that the Division does not ratify the decisions of either committee; it merely accepts the reports of both committees at its open meetings. Further, under section 11126(c) of the Government Code (the Bagley-Keene Open Meetings Act), the Application Review Committee may hold a closed session to discuss licensure applications "provided the advisory body does not include a quorum of the mem-

bers of the state body it advises." By statute, a quorum of the DOL is five members; thus, all seven DOL members could not attend a closed meeting of the Application Review Committee—it would have to be conducted in open session. Division member Dr. Galal Gough objected to this suggestion, stating that "every applicant and their advocate" would attend the meeting.

Following discussion, DOL Program Manager Terri Chau was instructed to prepare a staff issue paper and present it at DOL's June meeting.

Implementation of SB 645. At its March 3 meeting, DAHP presented a second draft of proposed regulations to implement SB 645 (Royce), regarding the training and duties of medical assistants (MAs). (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 51-52 and Vol. 8, No. 4 (Fall 1988) p. 60 for background information.) The second draft posed some problems relating to clarity and the potential for misinterpretation. For example, as written in the proposed draft regulations, the supervising physician may provide the MA with written protocols to be followed. However, this reference was criticized as being too broad and discretionary. DAHP will make clarifications and present a third set of draft regulations at the June meeting. No formal regulatory hearing has been set.

LEGISLATION:

AB 184 (Speier) would change BMQA's name to the "Medical Board of California." This bill is pending in the Assembly Health Committee.

AB 675 (Speier) would add the charging of an excessive fee for professional services to existing grounds for disciplinary action against physicians. The Board disapproves this bill, which is pending in the Assembly Health Committee.

AB 686 (Roybal-Allard), also opposed by the Board, would require every physician who provides prenatal care to a patient to inform the patient regarding caesarean section procedures at the first prenatal consultation, and would also require the physician to ensure that certain specified information is given verbally and in writing to the patient. This bill would further require every hospital that provides obstetrical services to compile statistics on procedures related to caesarean sections and distribute these statistics to every physician practicing obstetrics. At this writing, this bill is pending in the Assembly Health Committee.

SB 37 (Doolittle) would require physicians to explain to elective surgery patients the probability of a blood trans-



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fusion during surgery and the alternatives available. Elective surgery patients would also be required to sign an informed consent form for the blood transfusion. The Board voted to disapprove the bill as unnecessary and in need of clarification. At this writing, this bill is pending in the Senate Business and Professions Committee.

SB 1211 (Keene) is the 1989 version of SB 2565 (Keene), which was vetoed by the Governor in September 1988. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 59 for background information.) SB 1211 is CMA's bill to establish procedural due process standards for peer review actions in the private sector. The bill would specify that California is "opting out" of the standards and protections of the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. section 11101. Whenever a physician is the subject of a final proposed action of a peer review body which could mandate reporting to DMQ under section 805 of the Business and Professions Code, SB 1211 would entitle the physician to written notice of the recommended adverse action, a hearing if requested, an opportunity to question and challenge the peer review panel members for bias, specified discovery rights, and cross-examination. Each facility has the option of allowing the physician to be represented by counsel during the proceeding. Following the hearing, the physician would be entitled to a written decision including findings of fact, conclusions of law, an order, and an explanation of the internal appellate mechanism (if any). This bill is pending in the Senate Judiciary Committee.

SB 1434 (Presley) would require courts to report the initial filing of all medical malpractice actions to DMQ for tracking. This bill, which is expected to be amended to include the discipline system recommendations suggested by the Center for Public Interest Law (see *supra* FEATURE ARTICLE for background information), is currently pending in the Senate Judiciary Committee.

SB 1162 (Stirling) would provide that it constitutes unprofessional conduct for a licensed physician to perform a surgical procedure employing the use of conscious sedation, regional anesthesia, or general anesthesia outside the auspices of a peer review body, unless the physician holds active surgical staff privileges for comparable procedures at a health facility that is served by at least one peer review body which is required to report to DMQ under section 805 of the Business and Professions Code, or unless the office of the physician is accredited

by specified private organizations or a comparable organization approved by BMQA. This bill is pending in the Senate Business and Professions Committee.

SB 1163 (Stirling), which would add section 2285.5 to the Business and Professions Code to strictly regulate physician advertising of specialties and training, is also pending in the Senate Business and Professions Committee at this writing.

SB 711 (Greene) would require DMQ to consider specified factors in exercising its authority to discipline a physician for repeated acts of clearly excessive prescribing, furnishing, or administering of drugs or treatment. This bill is pending in the Senate Business and Professions Committee.

AB 2122 (Allen) would amend section 805 of the Business and Professions Code to redefine the term "peer review body"; require reporting by the chief executive officer of a facility (as well as the chief of staff); and require reporting of a licensee's leave of absence following notice of an impending investigation. This bill is pending in the Assembly Health Committee.

AB 1729 (Chandler) would make it a misdemeanor for any person who subverts or attempts to subvert any examination, in addition to the disciplinary action authorized. This bill would also provide that a person found guilty of violating the provision would be liable for costs incurred by an agency in an amount not to exceed \$10,000 and for the costs incurred for the prosecution, in addition to any other penalties. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 1565 (Sher), as amended April 12, would apply discovery immunities to peer review records or proceedings of clinics, including clinics certified to participate in the federal Medicare program as ambulatory surgical centers, consisting of or employing more than 25 physicians. This bill is pending in the Assembly Health Committee.

LITIGATION:

A jury trial in San Francisco Superior Court was scheduled to begin on June 5 in *Le Bup Thi Dao v. BMQA*. In that action, several Vietnamese-American physicians seek damages for a two-year period during which the DOL denied them licensure. The physicians, all of whom graduated from the University of Saigon after 1975, allege that DOL's actions denied them due process and equal protection, and violated the Admin-

istrative Procedure Act and the Bagley-Keene Open Meetings Act. Following DOL's two-year moratorium, the physicians were licensed under a special application evaluation procedure established in SB 1358 (Royce). (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 53-54 and Vol. 7, No. 2 (Spring 1987) p. 1 for background information.)

In *In Re Grand Jury Proceedings*, No. 88-2893 (Feb. 9, 1989), the U.S. Ninth Circuit Court of Appeals declined to recognize a psychotherapist-patient privilege in the context of a grand jury investigation. The court upheld denial of motions to quash subpoenas seeking to compel production of Jane Doe's psychiatric and hospital records in the suspected murder of Doe's infant. Doe contended that the requested production would violate the psychotherapist-patient privilege, Doe's right of privacy, and Doe's right to be free from self-incrimination under the fifth amendment.

The Ninth Circuit affirmed the district court's denial of the motions to quash. The Ninth Circuit has not recognized the psychotherapist-patient privilege in the context of a criminal investigation, nor has it adopted a physician-patient privilege. In criminal cases brought before federal court, federal privilege law (not state law) must be applied. Federal Rule of Evidence 501 states that the privilege of a witness is governed by common law. The psychotherapist-patient privilege was developed by state statutory enactment. Therefore, it is up to Congress to define whether such a privilege is to be recognized in federal criminal proceedings.

Furthermore, Doe had no reasonable expectation of privacy in her medical records. Modern medical practice requires multiple disclosures to doctors, health personnel, and often public health agencies. Nor is there any general right of privacy before a federal grand jury. The constitutional right of privacy that extends to psychotherapist-patient communications in patient-initiated state civil actions must be balanced against the state's interest in the federal crime of murder.

Finally, the psychiatric records sought in this grand jury investigation were voluntarily kept business records. Thus, they were outside the scope of the Fifth Amendment privilege against self-incrimination.

RECENT MEETINGS:

At its March 3 meeting, DAHP approved the following mission statement to describe its philosophy and role: "The mission of the Division of Allied Health Professions of the Board of Medical



Quality Assurance of the state of California is to protect the health, safety and welfare of the citizens of California by providing oversight of, and responsibility for, the activities of the seven examining committees and one board under the jurisdiction of the Board of Medical Quality Assurance; for the registration programs of opticians, contact lens dispensers, spectacle lens dispensers and research psychoanalysts; and for the regulatory oversight of medical assistants."

The goals adopted by DAHP to further these objectives include: acting as advocates for California's citizens regarding licensure, discipline, and policy oversight of nonphysician licentiates; assisting committees with public policy; and Board policy matters. The DAHP recognized the desire of its examining committees to become more autonomous, and stated it does not oppose this. However, DAHP is concerned with how greater autonomy of committees relates to the health, safety, and welfare of citizens.

At its March meeting, DMQ approved a legislative proposal from the MQRC Council. The proposal, presented by MQRC Program Manager Susan Wogoman, would mandate coroner reporting to BMQA of deaths which may be due to physician negligence, incompetence, or excessive treatment. Currently, most coroners do not routinely report such deaths to BMQA. Under the proposal, coroners need not make a determination of negligence and/or competence; their responsibility will be to forward relevant information to the Board for review and investigation. The coroners will continue to have sole responsibility to determine the cause of death.

Representatives of the Coroners' Association also expressed approval for mandatory reporting and protection from civil liability for filing such reports. The draft proposal will be further discussed at the June meeting regarding how to go about legislative implementation.

FUTURE MEETINGS:

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 rule-making 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 Procedure.

In furtherance of AEC's decision to implement a formal procedure for appealing the results of its practical exam, the Committee has proposed the adoption of new section 1399.445, Chapter 13.7, Title 16 of the California Code of Regulations (CCR), which would allow an appeal of the practical examination score in writing within thirty calendar days from the date of notification of failure of the exam. 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 shall be conducted by one or more Committee members or the Committee's designee, and their findings shall be subject to the approval of the Committee in its discretion. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 52 and Vol. 8, No. 4 (Fall 1988) p. 61 for background information.) AEC tentatively scheduled a public hearing on this proposed regulation for its June 3 meeting.

Proposed Regulations. Following their October 1988 rejection by the Office of Administrative Law (OAL), proposed regulatory sections 1399.425, 1399.426, and 1399.436 regarding acupuncture training programs were slightly revised for clarity and have been resubmitted to OAL for approval. (See Vol. 9, No. 1 (Winter 1989) p. 53 for background information.)

LEGISLATION:

SB 654 (Torres) would require certain group health care service plans, including those covering public employees, to offer acupuncture coverage. Current law provides an exception for employees of public entities. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 633 (Rosenthal) would require the AEC to prepare and administer its licensure examination twice per year at

six-month intervals. This bill is pending in the Senate Business and Professions Committee.

AB 2367 (Filante) would specify that the Department of Consumer Affairs has the responsibility of reviewing and supervising the examination process of all boards to assure examination integrity and security. The bill would also specify that the five acupuncturist members of AEC shall be appointed by the Governor, and that they shall represent the various ethnic background of AEC licensees. AB 2367 would also provide that AEC's exam shall be administered by independent consultants, with technical advice and assistance from the acupuncturist members of AEC. This bill is pending in the Assembly Health Committee.

LITIGATION:

The San Francisco Superior Court's dismissal of the lawsuit entitled *The Coalition for the Advancement of Acupuncture Practice, et al. v. Acupuncture Examining Committee*, No. 891325, has been appealed by the plaintiffs. The suit challenges AEC's practical examination as being arbitrary and capricious. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 66 and Vol. 8, No. 2 (Spring 1988) pp. 64-65 for background information.)

RECENT MEETINGS:

During AEC's February 22 meeting, the Committee held a public hearing on new regulatory section 1399.457, the proposed regulation regarding use of the initials "OMD". (See CRLR Vol. 9, No. 1 (Winter 1989) p. 53 and Vol. 8, No. 3 (Summer 1988) p. 65 for background information.) There was general agreement that licensees with an OMD degree should be allowed to use the title "doctor"; however, opponents claimed that the public would be misled by these initials. The language of this proposed regulation was originally drafted by BMQA's Division of Allied Health Professions, and it sets forth the standard which has been approved in the Attorney General's opinion on the issue. However, at its March meeting, DAHP concluded that the initials "OMD" are misleading, and that AEC licentiates should use "DOM" (Doctor of Oriental Medicine) instead.

DAHP has determined that it will not approved AEC's proposed changes to regulatory section 1399.451, which requires acupuncturists to brush scrub their hands between patients. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 52 for background information.) AEC licensees had urged DAHP to delete this requirement, claiming that their hands will



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become raw if they must brush scrub between each patient; the use of rubber gloves as an alternative would reduce the tactile sensitivity of their fingers.

Dr. Chae Woo Lew, who recently served two terms on the AEC, was arrested on January 21 on charges of bribery for allegedly accepting money in exchange for the answers to AEC's licensing exam. On March 3, 47 California acupuncturists were charged in connection with the alleged seven-year-long bribery scheme. AEC's Dr. Peter Eckman said the Committee will await the outcome of the prosecution of Lew and the arrested acupuncturists before taking any action. AEC's Joel Edelman has called for a state Attorney General's investigation into the Committee's past practices. (See *supra* LEGISLATION for summary of related bill, AB 2367.)

FUTURE MEETINGS:

September 23 in San Diego.
December 9 in Los Angeles.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer:

Margaret J. McNally
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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:

Examination Appeals Policy Review. At its March meeting, HADEC members expressed concern regarding the proctors who administer its practicum exam and

the lack of examination appeals by examinees.

The Committee believes that the proctors giving the practicum exam should be provided with standardized guidelines so as to limit the amount of individual bias. HADEC believes the content and language of the guidelines should be decided after the Committee receives the exam validity study due at the end of this year.

HADEC is also concerned about the fact that its examination appeal process is not widely known to examinees. For the April exam, those failing the test will be informed of the appeal process by letter. The Committee will also publish notice of the examination review process in its newsletter. It is hoped this outreach will inform applicants of the option for review.

OAL Disapproves Regulation Change. The Office of Administrative Law (OAL) recently disapproved HADEC's proposed changes to section 1399.141, Chapter 13.3, Title 16 of the California Code of Regulations, concerning continuing education (CE), which were adopted by HADEC at its March 1988 meeting. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 66 and Vol. 8, No. 2 (Spring 1988) p. 65 for background information.) The proposed amendments would have required CE courses to contain material which is beyond the level required for licensure. OAL found that this language fails the clarity standard of Government Code section 11349.1. HADEC intends to rework the wording and resubmit the proposed amendments to OAL.

LEGISLATION:

AB 459 (Frizzelle) would provide that, notwithstanding other provisions of law, any license issued pursuant to the Business and Professions Code by an agency within the Department of Consumer Affairs may be renewed at any time and without the requirement of reexamination, upon the payment of any applicable fees and the satisfaction of any continuing education requirements.

HADEC requires licensee renewal within five years of delinquency; if not renewed, the applicant is required to be reexamined. Because of constantly changing technology, HADEC fears that licensees renewing their licenses after five years of delinquency without reexamination could be a safety risk. The Committee voted to oppose the bill, which is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 1324 (Rosenthal) would authorize

the issuance of a temporary license to a hearing aid dispenser applicant licensed in another state if the license has not been subject to formal disciplinary action by another licensing authority and the applicant has been engaged in the fitting and sale of hearing aids for two years. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

At its March 18 meeting in San Diego, HADEC announced that the passage rate for the last exam was 62% for the written portion and 83% for the practicum. HADEC also reported that it revoked two licenses in fiscal year 1987-88.

A new member, Kevin X. McKennan, MD, joined the Committee at the March 18 meeting. He was appointed by Assembly Speaker Willie Brown and was warmly welcomed by the other Committee members.

FUTURE MEETINGS:

To be announced.

PHYSICAL THERAPY EXAMINING COMMITTEE

Acting Executive Officer:

Rebecca Marco
(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.

MAJOR PROJECTS:

Citation and Fine Regulations Disapproved. On February 1, the Office of Administrative Law (OAL) rejected PTEC's proposed addition of sections 1399.25-29, Title 16 of the California



Code of Regulations (CCR). These new sections would have implemented PTEC's authority to issue citations and fines for violations of its statutes or regulations, pursuant to section 125.9 of the Business and Professions Code. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 54 and Vol. 8, No. 4 (Fall 1988) p. 62 for background information.) The regulatory action was disapproved for its failure to comply with section 11346.4(b) of the Government Code, which requires an agency to notice a proposed regulatory change, complete its administrative action, and transmit the rulemaking file to OAL within one year.

Certificates. The Department of Consumer Affairs (DCA) wants to issue single-color, computer-generated wall certificates, instead of the diploma-type certificates which are currently issued. At its January meeting, Committee members opined that not only are the proposed certificates unexciting, but they are also difficult to read and understand, and would confuse the public.

LEGISLATION:

AB 2514 (Roos) would provide that PTEC's PT and PTA examination and reexamination fees shall be the actual cost to the Committee of purchasing, administering, and grading the exams; and would increase PTEC's fees for the initial PT license, duplicate wall certificate, duplicate renewal receipt, endorsement or letter of good standing, and application and renewal fees for the electromyography examination and certification. This bill is pending in the Assembly Health Committee.

LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n, et al. v. Board of Chiropractic Examiners, et al.* (consolidated case Nos. 35-44-85 and 35-24-14), in which BMQA and PTEC have intervened as petitioners, the Third District Court of Appeal recently rejected BCE's petition to review the lower court's grant of BMQA/PTEC's motion for summary adjudication on issues relating to the proper scope of chiropractic practice. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 54 for background information.) BCE has asked the lower court to reconsider its ruling. The Sacramento Superior Court was scheduled to hold a status conference in the case on May 26.

RECENT MEETINGS:

At PTEC's January meeting, the subcommittee on Scope of Practice and Enforcement reiterated the Committee's position that a PT may accept a diag-

nosis by a chiropractor so long as the diagnosis is within the chiropractor's scope of practice and the diagnosis is within the professional judgment of the physical therapist.

The Committee also discussed the evolving need for a diversion program for impaired physical therapists. The increasing number of reports regarding abuse of alcohol and drugs by PTs and PTAs requires Committee attention to the problem. The Physician's Assistant Examining Committee (PAEC) was recently authorized by statute to administer its own program, and PTEC decided to invite PAEC Executive Officer Ray Dale to its next meeting to solicit his input.

FUTURE MEETINGS:

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 order to clarify the scope of practice of PAs, the PAEC requested and received an opinion from the Office of the Attorney General (AG) regarding interpretation of physician's assistant regulations. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 55-56 for background information.) Because the PAEC felt that the interpretation rendered by the AG's office was unduly strict, it requested the AG to withdraw the opinion. In a letter to Committee member Judith L. Levy, Assistant Attorney General Jack Winkler responded that the PAEC had not taken issue with any of the interpretations of the language rendered by his office. He felt that any "dire consequences" suggested by Ms. Levy as resulting from the opinion "flow from the regulations, not from [the] opinion." The AG declined to withdraw the opinion, and suggested that any perceived problems be directed to the Board of Medical Quality Assurance or to the legislature.

The PAEC has formed an ad hoc committee to coordinate work with the California Academy of Physician Assistants (CAPA) on this issue. It will be the subject of close scrutiny in the future, as the Committee attempts to clarify the laws and regulations controlling PA practice.

Diversion Program. AB 4510 (Waters) (Chapter 385, Statutes of 1988) requires the PAEC to establish a substance abuse diversion program for PAs, similar to those established for other health care professions. A PAEC subcommittee has already met and discussed the issue of substance abuse with directors of other diversion programs. The subcommittee recommended that a part-time staff person be hired to develop a request for proposals to hire a contractor to provide some of the services needed. It is anticipated that the initial contract for a diversion program would be for one year. (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.)

Regulatory Changes. On January 27, the PAEC held a public hearing concerning proposed regulatory changes affecting the discretion of approved PA training programs to grant credit for past training to PAs. Currently, approved PA training programs must establish mechanisms by which a student may "challenge" curriculum requirements in order to obtain full credit for transfer and prior clinical experience, and evaluation of such a challenge must be made



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in "the most expeditious manner." The proposed repeal of section 1399.530(d), Chapter 13.8, Title 16 of the California Code of Regulations, would eliminate the requirement that educational programs establish equivalency and proficiency testing and other mechanisms whereby credit is given for past education and experience; an amendment to section 1399.531(c) would delete language requiring education programs to devise "challenge" mechanisms, and gives programs the discretion to give full credit for such prior training. No objections to the proposed regulatory changes were voiced; the Committee was scheduled to vote on the adoption of the proposed changes at its April meeting.

LEGISLATION:

AB 1912 (Waters) would allow PAs to complete death certificates in nursing homes, conduct physical examinations for the Department of Motor Vehicles, prescribe sunscreen devices for specified drivers, and notify coroners of unusual death. This bill is pending in the Assembly Health Committee.

RECENT MEETINGS:

During its January meeting, Executive Officer Ray Dale submitted reports on enforcement and licensing statistics. Currently, the PAEC is processing 59 open complaints and active investigations of PAs; ten PAs are on probation. For the period of July 1, 1988 through December 31, 1988, the PAEC licensed 522 supervising physicians and 68 PAs; 61 PAs were granted interim approval under Business and Professions Code section 3517, which allows candidates who have graduated from an approved program but not received their licensing examination results to practice as a PA.

An educational brochure directed at physicians and consumers has been completed by Vito Almaraz of CAPA, which the PAEC is considering adopting for its use. A simple "throw-away" flyer is also being considered to educate the general public. The Committee is concerned that it may be beyond its jurisdiction to work with CAPA on such a project; however, such collaboration may be acceptable under its general authority to ensure the competence of PAs in practice. Discussion regarding this topic will continue at future meetings.

FUTURE MEETINGS:

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 preceptor 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.

LEGISLATION:

AB 193 (Allen) would require state agencies to submit to bill authors summaries of actions taken to implement statutes that establish new duties pursuant to existing programs. It would further require responsible state agencies to provide the authors with advance copies of budget change proposals arising from statute implementation. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 350 (Brown) would enact the Tucker Health Insurance Act of 1989 to require every employer which employs five or more persons to provide specified health care coverage to every employee paid monthly wages. It would also require the employer to continue health care coverage payments for up to three months if an employee is prevented by sickness from making payments. Failure to pay health care coverage costs would make the employer liable for the health care costs incurred. This bill is pending in the Assembly Committee on Finance and Insurance.

AB 402 (Roybal-Allard) would clearly exempt from California licensure provisions all out-of-state licensed physicians and health care practitioners who provide health care services during an officially declared state of emergency. This bill is pending in the Assembly Health Committee.

AB 459 (Frizzelle) would provide that any license issued by a licensing agency within the Department of Consumer Affairs may be renewed at any time without meeting a reexamination requirement if continuing education requirements have been met and all applicable fees are paid. BPM opposes this bill,

which is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 675 (Speier) would add to the grounds for disciplinary action the charging of an excessive fee for professional services rendered to a patient by a physician. This bill is pending in the Assembly Health Committee.

AB 2459 (Klehs) would provide that a certificate to practice podiatric medicine may also be known as a podiatric physician's and surgeon's certificate, and would authorize a podiatrist or doctor of podiatric medicine to use the title "podiatric physician and surgeon." This bill is pending in the Assembly Health Committee.

AB 10 (Hauser) would create the California Health Insurance Program within the state Department of Health Services to arrange for the provision of health services through various approved public and private health insurance plans. The bill would also create a trust fund supported by increased state taxes to help subsidize certain health insurance premiums imposed on certain individuals who cannot meet the premium costs. This bill is pending in the Assembly Finance and Insurance Committee.

RECENT MEETINGS:

At its March 8 meeting in Sacramento, BPM again decided to delay a formal response to proposed regulations defining the technical support services which may be performed by medical assistants until BMQA's Division of Allied Health Professions releases its third draft in June. BPM wants to ensure that the proposed regulations reflect consistent application to physicians and podiatrists. DAHP is authorized to promulgate regulations pursuant to SB 645 (Royce) (Chapter 666, Statutes of 1988). (For background information, see CRLR Vol. 9, No. 1 (Winter 1989) p. 57.)

At the same meeting, BPM adopted an orientation protocol for monitors assigned to oversee probationer practice. Monitors are selected on the basis of their demonstrated podiatric expertise, background, and ability to participate. Monitors have the authority to review a probationer's recordkeeping, diagnoses, and treatments rendered. After each visit, the monitor will provide a narrative report to BPM defining any area(s) of practice deficiency observed. The report will also include plans to correct the deficiency(ies), along with target dates for completion.

The first issue of BPM's annual newsletter is due to be printed in June. The



newsletter format is designed to educate BPM's licentiates about podiatric practice rules and regulations, the Enforcement Program, the Diversion Program, and BPM's policy decisions.

After reconsideration of the issue, BPM will follow BMQA's lead in declining to reinstate the CPR requirement for license renewal. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 57 for background information.) BMQA dropped the mandatory CPR requirement in 1985 because of concerns about contracting the AIDS virus during CPR training.

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 Fee Increases. At its February 25 meeting, PEC held a regulatory hearing and subsequently adopted two amendments to section 1392 of its regulations, which appear in Chapter 13.1, Title 16 of the California Code of Regulations. The fee for a licensure examination was increased from \$100 to \$150, effective October 1, 1989. This increase is necessary because of an increase in the cost of purchasing the written exam. The exam is developed by the Professional Examination Service and is administered in over sixty jurisdictions in the United States and Canada. The present cost of the exam is \$90 per examination booklet, but the cost will increase to \$135 in October 1989. The PEC is supported solely by funds generated by its various fees. The fees are designed to cover the costs of the programs for which they are collected, and to help maintain a minimum fund reserve to ensure solvency in case of unexpected expenditures.

The amendments also establish a \$40 fee for biennial renewal of an inactive license. This fee is authorized by section

2988 of the Business and Professions Code. PEC believes that over 300 licensees per year maintain an inactive license—they have ceased practicing psychology in California but want to retain the option in the future. The inactive fee is 66% less than the renewal fee required to maintain active, practicing status. The inactive status fee would pay for the administrative costs of the program and also contribute proportionately to PEC's enforcement programs.

These regulatory amendments await review and approval by the Office of Administrative Law (OAL).

PEC Adopts Regulations for Alcohol and Chemical Dependency Training. Following a January 27 public hearing, PEC adopted regulations that will require psychologists to receive training in alcohol and chemical dependency detection and treatment. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 57 for background information.) The regulations have been submitted to the OAL for approval.

LEGISLATION:

AB 858 (Margolin) would change PEC's name to the Board of Psychology. At this writing, this bill is pending in the Assembly Ways and Means Committee.

AB 459 (Frizzelle) would add section 121.5 the Business and Professions Code. Existing law allows boards and commissions to deny renewal of licenses after the licensee has not renewed for a certain amount of time. In PEC's case, after the license has lapsed for five years, a new license may be issued only after successful passage of the entry examination. AB 459 would provide that a delinquent license may be renewed at any time after its expiration without limit as to time, and without the requirement of reexamination, upon the payment of any applicable fees and the satisfaction of continuing education requirements. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 1266 (Tucker) would enact the Alcohol and Drug Counselors License Law. In order to become licensed as an alcohol and drug counselor by the state, an applicant must complete 315 hours or 21 semester academic units of approved alcohol and drug education training. AB 1266 has been converted to a two-year bill.

SB 1004 (Boatwright) would make it a misdemeanor or felony offense, punishable as specified, for any psychotherapist or person holding him/herself out as a psychotherapist to commit specified acts of sexual exploitation with a current

patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in these acts, unless six months have elapsed from the termination of the relationship. This writing, this bill is pending in the Senate Judiciary Committee.

LITIGATION:

In In Re Grand Jury Proceedings, No. 88-2893 (Feb. 9, 1989), the U.S. Ninth Circuit Court of Appeals refused to recognize the psychotherapist-patient privilege of confidentiality in criminal investigations. The case involved the death of Jane Doe's child. Doe contends the death was due to sudden infant death syndrome, but government investigative units suspected murder and subpoenaed the documents of Doe's psychiatrist John Roe and two hospitals which had treated Doe after the child's death. Roe and one of the hospitals filed motions to quash their subpoenas. Doe filed a similar motion to quash all subpoenas related to her psychiatric care. The district court denied the motions but issued a temporary stay pending this appeal. The Ninth Circuit held that the psychotherapist-patient privilege, which has developed from state statutory enactment, is not cognizable in federal criminal proceedings.

RECENT MEETINGS:

At its February 24-25 meeting in San Francisco, PEC held its annual elections. Frank Powell was reelected chair of the PEC; Linda Lucks was elected Vice-Chair; and Philip Schlessinger was elected Secretary.

The Committee released the January oral examination statistics. Applicants may be tested in January or June in any one of three domains. The license is generic in that no specialty licenses are issued; and if one passes the exam in any domain, one may practice in any field. PEC tests the different areas so that an applicant who has studied and wishes to practice in a certain area may benefit from his/her expertise. On the January exam, 33% of the 6 applicants who were tested in Domain I passed; 67% of the 12 applicants who were tested in Domain II passed; and 60% of the 485 applicants tested in Domain III passed.

The PEC believes that the improved passage rate combined with fewer appeals by unsuccessful applicants is due to better questions and improved administration. The PEC will attempt to further improve efficiency by establishing an ad hoc committee, which will attempt to establish criteria to be used in selecting the oral commissioners who administer the exams. The PEC is trying to develop



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a larger, more qualified pool of oral commissioners.

Another topic discussed in January was the rise in reported complaints against psychotherapists. The number reported to PEC has risen from 201 in 1987, to 348 in 1988, to a projected 480 by June 1989. The PEC believes this increase in the number of complaints reflects a better-informed public with a willingness to file complaints. Sexual abuse is the highest reported complaint. Studies have shown that 5-10% of California's 38,000 psychotherapists have had sex with their patients. (See CRLR Vol. 7, No. 3 (Summer 1987) p. 83 for background information.) Because an estimated 80% of therapists charged with sexual misconduct engage in such conduct with more than one patient, the number of patients involved is estimated at 7,000-17,000. The PEC is trying to develop disciplinary guidelines to deal with this serious problem.

FUTURE MEETINGS:

July 21-22 in San Francisco.

September 15-16 in San Diego.

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.

Gail Hubbard was elected to serve as chair of SPAEC at the Committee's February 3 meeting. Ms. Hubbard, a dispensing audiologist who owns a combination audiology and hearing aid dispensary practice in the San Diego area, replaces Dr. Philip Reid. Jacquelyn Graham, a speech pathologist who has served with the Buena Park school district since 1968, was elected vice-chair.

MAJOR PROJECTS:

Speech Pathology and Audiology

Aide Regulations. Proposed changes to sections 1399.170-.176, Title 16 of the California Code of Regulations, which were submitted to the Office of Administrative Law (OAL) for review, were returned to SPAEC for minor modification. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 58; Vol. 8, No. 4 (Fall 1988) p. 66; and Vol. 8, No. 3 (Summer 1988) pp. 70-71 for background information.)

The proposed changes, which would impose stricter requirements regarding the registration, supervision, and training programs for speech pathology and audiology aides, will be modified by SPAEC in accordance with OAL's recommendations and resubmitted.

Rulemaking Calendar for 1989. SPAEC plans to draft new regulations creating penalties for violations of the licensure act and regulations which govern the practice of speech pathologists and audiologists. Currently, there are no applicable penalties. The proposed regulations would be established under the authority of sections 12.5, 125.9, and 125.95 of the Business and Professions Code. SPAEC projects the notice of proposed action will be ready in July; hearing will be scheduled during September; and the rulemaking package will be sent to OAL in January 1990.

RECENT MEETINGS:

During the Committee's February 3 meeting, Executive Officer Carol Richards presented a comparison of the number of speech pathology and audiology licenses issued during 1987 and 1988. The rate of issuance has been stable, with 369 licenses issued in 1987 and 364 in 1988.

Ms. Richards also reported the current budget report looks favorable with funds earmarked for a pamphlet to be made available to aide supervisors this year.

At the same meeting, the Committee discussed and approved a revised draft of the application form for registering aides. The new application will be available when the proposed regulatory changes for speech pathologist and audiology aides have been approved by OAL.

FUTURE MEETINGS:

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 Vol. 8, No. 2 (Spring 1988) p. 69; and Vol. 8, No. 1 (Winter 1988) pp. 66-67.) A new computer tracking system that would record numerous enforcement actions, including complaints, citations, and Department of Health Services (DHS) referrals, was scheduled to be operative in April. At the Board's February 17 meeting, Executive Officer Ray Nikkel reported that the office presently has the terminal hardware and necessary software, but is waiting for time on the mainframe.

The Board is currently conducting