



REGULATORY AGENCY ACTION

ures, and evaluation process of the Board in holding exams and allowing review and appeal.

Second, those qualified to appeal an examination score should be limited to those who failed the test by a specific number of points or less. Appeals should be scheduled by appointment and a fee may be charged. Anyone wishing to review their exam rather than appeal should be allowed to do so without charge.

It was also recommended that an appeals committee be formed from the pool of examination commissioners who evaluate the exam and that they receive a per diem fee of \$100. Each of these suggestions would require either a regulatory or legislative change to become effective.

LEGISLATION:

SB 1676 (Dills) would repeal section 5645 of the Business and Professions Code, which exempts irrigation consultants from the licensing and regulation requirements that govern landscape architecture. This bill, sponsored by irrigation consultants, provides for the licensing and regulation of irrigation consultants by the BLA. The BLA would be required to appoint an advisory committee to assist and advise it on matters relating to the examination, licensing, and regulation of irrigation consultants. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 58 for background information on this issue.)

SB 1676 would establish the qualifications and fees for licensure, and for the licensure of persons currently engaged in the practice of irrigation consulting. Persons who subsequently fail to become licensed yet engage in irrigation consulting or hold themselves out as a consultant would be guilty of a misdemeanor. *SB 1676* has become a two-year bill.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 59:

SB 572 (Bergeson), which would eliminate the oral examination for instate applicants and extend the statute of limitations for filing accusations against landscape architects, passed the Senate on May 4 and is pending in the Assembly Ways and Means Committee.

AB 848 (Bentley), which would have added services of landscape architects to the list of professions which may be granted contracts by state and local agencies based on demonstrated competence and professional qualifications rather than competitive bidding, failed in the Assembly Ways and Means Committee on May 10.

RECENT MEETINGS:

In an effort to save money, the Board held its April 7 meeting in Sacramento at the Department of Consumer Affairs (DCA). At that meeting, DCA budget analyst Susan Andreani presented an overview of the Board's budget. Over the past nine months, the Board has been cutting back on expenses to alleviate a deficit due in part to cash flow problems caused by the way in which it collects licensing renewal fees. The Board plans to initiate a process of cyclical renewal, under which licensees would submit their fees at different intervals throughout the year rather than all at the same time, as currently occurs. This would create a reserve padding for the Board and would even out the cash flow. However, until this new system goes into effect, the Board will likely have to apply for a loan from the general fund.

Also at its April meeting, the Board's Education Committee reported on its efforts to clarify the eligibility and job experience requirements provided for in section 2620 of the Business and Professions Code. Once complete, the Committee's recommendations will be considered as proposed regulatory changes.

Robert Willhite, a registered professional forester from the Board of Forestry (BOF), attended the April meeting in order to discuss with BLA the possible need to clarify the respective jurisdictions of the BLA and BOF. Urban expansion has resulted in previously unanticipated problems with regard to the overlap of jurisdiction between agencies. This effort is merely to clarify the boundaries now in order to avoid any conflict in the future.

Also at the April meeting, Robert Hablitzel was reelected to his position as BLA president.

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:

Physician Discipline System Under Attack. At a special May meeting and



at the regularly-scheduled June meeting, DMQ and the full Board spent a considerable amount of time deflecting harsh public criticism about the efficacy of BMQA's physician discipline system. Within the last several months, and as DMQ's complaint backlog continues to grow, BMQA's discipline system has been the subject of attention by various governmental agencies and consumer organizations, including the following:

-In February 1989, the Office of the Legislative Analyst released its review of BMQA's proposed 1989-90 budget, noting that as of December 1988 almost 800 cases were backlogged, and criticizing the length of time which serious cases go unassigned to an investigator. The Legislative Analyst found that a majority of the backlogged cases "may have a potential for physical harm to the public," which is "undesirable and inconsistent with the Board's stated mission." The Analyst noted that BMQA had not requested additional staff to reduce the backlog, and required BMQA to report to the Legislature's fiscal committees on "how it plans to address the projected number of unassigned cases in 1989-90."

-Also in February 1989, the Commission on State Government Organization and Economy (Little Hoover Commission) released a report on the dismal quality of medical care in nursing homes, and declared that BMQA has been "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." (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 38-39 for summary of the Little Hoover Commission Report.)

-In April 1989, the Center for Public Interest Law (CPIL) concluded a year-long study and released its report entitled "Physician Discipline in California: A Code Blue Emergency," which was highly critical of the discipline system's lack of public outreach; declining overall output; inability to act on an immediate, interim basis to protect the public; complaint backlog; lengthy, cumbersome, and secretive administrative process; and lack of adequate staffing, authority, and resources. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 1 for a condensed version of CPIL's report.) CPIL has since incorporated many of its proposed reform suggestions into SB 1434 (Presley), pending in the Senate Judiciary Committee at this writing. (See *supra* LEGISLATION for further information on SB 1434.)

At the special May meeting, the full

Board reviewed BMQA's mandated report to the Joint Legislative Budget Committee, entitled "Special Budget Report: Curing the Backlog." In the report, BMQA noted a 22% increase in incoming complaints and hospital and malpractice settlements between 1983-84 and 1987-88. The 1988-89 figures thus far indicate an *additional* 23% increase in these categories.

The report also noted that between 1983-84 and 1988-89, BMQA has requested an additional 33.5 enforcement staff positions, but was granted only 3.5 permanent and 3 limited term positions (an increase of only 7.3%) during that time period. This dramatic increase in workload and disproportional increase in staffing has resulted in a serious complaint backlog which is acknowledged by the Board; Assistant Executive Officer Tom Heerhartz opined that had the staffing increases been approved by the DCA and the Department of Finance (DOF) when requested, the backlog would not exist today.

To reduce the serious backlog of cases which has accumulated, BMQA voted at the May meeting to increase licensing fees to at least \$365 per biennial licensing period, and add ten full-time investigators, two supervising investigators, and six professional/clerical support personnel on a permanent basis; and eight additional investigators and two professional/clerical personnel for a two-year limited term. At that time, the Board voted to support legislation which would raise the statutory license fee ceiling to \$400 per two-year period.

In an unusually public setting, Board President Dr. Galal Gough used the full Board's June 2 meeting to lash out at DCA, DOF, and CPIL for BMQA's current troubles. In a thirty-minute prepared speech, Gough castigated the agencies for their failure to provide BMQA with the money to finance its enforcement program, noting that DCA Director Michael Kelley had yet to respond to BMQA's April report and request for additional positions. He criticized DOF for its similar inaction on BMQA's budget requests, and expressed outrage that DOF even failed to inform BMQA that its budget hearing in Senator Robbins' budget subcommittee had been moved up by one day.

Gough also assailed DCA for its failure to support BMQA in its attempts to defend itself against the criticisms in CPIL's report. While BMQA has responded to the report by claiming it suffers from "exaggerated language and inflated data," DCA has informed at least one

legislator that it is concerned about the Board's discipline system. Gough read excerpts from a letter written by DCA Director Kelley to Senator Larry Stirling in which Kelley stated: "Obviously, [State and Consumer Services Agency Secretary] Shirley Chilton and I are concerned about the quality and timeliness of the BMQA's enforcement program... the CPIL's study indicates that the BMQA's enforcement program requires serious review...I am very concerned about the BMQA's ability to protect the public's health, safety and welfare." Gough also stated that DCA had even gone so far as to intervene in a BMQA investigation, and had told the complainant that DCA was in charge of the investigation.

Dr. Gough concluded his presentation by stating that he is "concerned, upset, offended, and outraged" at the pattern of events perpetrated by DCA. Other Board members voiced "wholehearted, unconditional support" for Gough's statements. DMQ President Dr. Eugene Ellis stated that BMQA is "inappropriately located under DCA," and urged fellow members to "use all these complaints against us to get the hell out from under DCA." Board member Dr. J. Alfred Rider agreed and additionally suggested that BMQA hire a full-time public relations officer and a full-time legislative coordinator to smooth relations with the legislature. The Board voted to seek an immediate meeting with DCA, DOF, and the Governor, so that BMQA might officially voice its displeasure about the treatment accorded it.

Public Hearings on Discipline System Planned. At the special May meeting, Board President Dr. Galal Gough announced that he wanted to conduct two public hearings (one each in northern and southern California) on CPIL's report, so as to receive "direct public input" regarding the accessibility of the Board and the public's perception of BMQA's discipline system in general. Executive Director Ken Wagstaff noted that all three recent critical reports have addressed BMQA's backlog, the systemic delays, and perceived bias on the part of the decisionmakers, but opined that many of these complaints are the result of a "certain amount of ignorance on the part of the public as to how BMQA works," and announced his hope that the hearings could be used as a means to "educate the public regarding the function of BMQA."

By the June DMQ and full Board meetings, the articulated reason for the planned public hearings had changed.



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Several DMQ members indicated that an open public hearing at which consumers could voice complaints about BMQA's discipline system could "get out of hand," and encouraged a more "educational" tenor for the hearings. At the June 2 full Board meeting, Dr. Gough announced that the hearings "are not in response to anything," but should serve as a forum in which BMQA could educate the public about its jurisdiction and procedures. The Board intends to convey a "positive message" about its operations, and will feature presentations by the public members of the Board.

Formal Response to Little Hoover Commission Report. At its June meeting, DMQ noted that it has created a committee to formulate an institutional response to the Little Hoover Commission's recent report criticizing the quality of medical care in nursing homes. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 38-39 and 60 for background information.) The committee will meet to discuss the Commission's various recommendations, which include the establishment of a formal peer review system as a prerequisite for the licensure and operation of all California nursing homes; the development of guidelines and standards of practice for medical care in nursing homes; and adoption of regulations by BMQA to create a citation and fine system to sanction poor patient care of nursing home residents. The committee was scheduled to meet and report back to DMQ at a special July 28 meeting.

Proposed Three-Year PGT Requirement. At DOL's June meeting, the Division continued its discussion of a proposed increase in the number of years (from one to three years) of required postgraduate training (PGT) prior to licensure. The recommendation was made by DOL to the legislature in a report on its site visits to several foreign medical schools. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 60-61 and Vol. 9, No. 1 (Winter 1989) p. 51 for background information.) Rather than being responsible for reviewing, approving, and/or accrediting the curricula of each foreign medical school, DOL would rather increase the number of years of required PGT training in California under the supervision of approved California teaching institutions. Further, in order to avoid the appearance of discrimination against foreign medical graduates (FMGs), the three-year requirement would apply to all applicants for licensure, including those from U.S. and Canadian schools.

At the June meeting, two representa-

tives from the Nevada Board of Medical Examiners spoke to DOL about Nevada's experience with its three-year PGT requirement. Nevada board member Dr. Thomas Scully reported that in 1984, 81% of licensure applicants had two or more years of PGT, and 75% had three or more years. The Nevada representatives concluded that although there has been a slight decrease in the number of applications for physician licensure since its three-year requirement took effect in 1985, it is attributable to other factors, such that the three-year requirement has not had an appreciable effect on the number of physicians applying for or obtaining licenses. An exception to the three-year requirement is made for physicians who have at least one year of PGT, five years of experience practicing in another state, and a willingness to practice in an underserved area for three years.

With regard to moonlighting, Dr. Scully reported that after one year of PGT, residents may obtain a limited license to practice under the supervision of the hospital in which they are completing their training; they are not allowed to moonlight outside their training institution.

Following this presentation, numerous witnesses testified on the Division's proposal. Several representatives of medical schools, including UC Davis, UCLA, UCSF, and UCSD, agreed that the number of required PGT years prior to licensure should increase, but urged DOL to create some sort of limited licensure to enable residents to sign death certificates prior to completion of their PGT. These witnesses' recommendations varied between two and three years of required PGT; UCSF representative Dr. William Hamilton stated that it is "not discriminatory to require more PGT from FMGs than from graduates of LCME-approved schools," such that a two-tiered system may be appropriate.

Two representatives of organizations of interns and residents expressed reservations about any proposal which would prohibit residents from moonlighting outside the primary training institution. These witnesses commented on the public health impact of such a restriction; that is, many people in underserved areas presently receive no health care other than that provided by licensed residents who are moonlighting outside their residencies. They also testified to the low salaries paid residents and the huge loans most are required to pay back once they become licensed.

DOL President Dr. Jerome Unatin announced that the Division would take

up this matter again at its September meeting, in hopes that legislation on the issue could be introduced in January.

Section 1324 Training Programs. Following up on its lengthy March discussion of the future of physician training programs approved by DOL under section 1324, Title 16 of the California Code of Regulations (CCR) (see CRLR Vol. 9, No. 2 (Spring 1989) p. 61 for background information), DOL decided at its June meeting to conduct site visits to each of the seven existing section 1324 programs and review them in their entirety. Once the site visits are concluded, the Division will be in a better position to determine whether regulatory changes are needed.

Role of DOL Committees. Also at its June meeting, DOL resumed discussion of the role of its Application Review and Special Programs Committees. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 61 and Vol. 8, No. 2 (Spring 1988) p. 59 for background information.) Following a discussion of several alternative formats, DOL decided to retain the committees as currently established, but to distribute a full set of committee materials to all DOL members, and to provide a more substantive report of the committees' decisions at the full DOL meeting.

DOL Rulemaking Approved. On May 12, the Office of Administrative Law approved DOL's adoption of section 1315 and its amendment of section 1321, Title 16 of the CCR, which require that an applicant's clinical training be in contiguous blocks and that the required year of PGT be a continuous year. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 58-59 and Vol. 8, No. 3 (Summer 1988) pp. 62-63 for background information.)

LEGISLATION:

SB 1330 (Presley) would increase the statutory ceiling on BMQA initial licensure fees and biennial renewal fees from the current \$325 level to \$400, and would enable BMQA to raise licensure fees through emergency regulations. At this writing, SB 1330 is pending in the Senate Business and Professions Committee.

SB 1480 (Keene), as amended May 18, would amend section 800 of the Business and Professions Code to declare the identity of whistleblowers who report physician misbehavior confidential. The reported physician would be able to obtain the substance of the complaint but not the identity of the complainant. This bill passed the Senate on June 1 and is pending in the Assembly Health Committee.

The following is a status update on



bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 61-62:

SB 1434 (Presley) has been substantially amended to include numerous recommendations of the Center for Public Interest Law suggested in its recent critical report (*see supra* MAJOR PROJECTS). Among other things, the bill would enhance DMQ's ability to detect incompetent and/or impaired physicians by requiring improved reporting of malpractice judgments and settlements by insurance companies and courts, adverse peer review actions by hospitals, felony charges against physicians by district attorneys, and physician negligence detected by coroners conducting autopsies.

SB 1434 would also create a Medical Quality Panel of specialized administrative law judges (ALJs) within the existing Office of Administrative Hearings; these judges would preside over all discipline proceedings of BMQA and the Board of Podiatric Medicine, and would be authorized to impose interim suspension to prevent an incompetent/impaired physician from continuing to practice medicine during the often lengthy disciplinary proceeding. Under current law, interim suspension of a physician's license is almost impossible—it may be accomplished only through a temporary restraining order issued by a superior court; only three have been obtained during the past three years.

An early version of *SB 1434* would have removed the participation of DMQ and its MQRs in disciplinary adjudications, and provided that the decision of the ALJ is final, subject to review before a special three-judge panel of the court of appeal, and then by discretionary petition to the California Supreme Court. Later versions have restored the authority of DMQ to review proposed ALJ decisions, but continue to omit participation in adjudications by MQRs.

While BMQA supports approximately one-half of the bill's provisions, it is opposed to any version of the bill which does away with the "peer review" system of professional discipline and/or removes DMQ's final decisionmaking authority; at this writing, BMQA is also opposed to deleting the authority of the MQRs to hold evidentiary hearings and fully participate in the adjudicatory process.

SB 1211 (Keene), the California Medical Association's bill to establish procedural due process standards for peer review actions in the private sector, was amended on May 2. As amended, the bill would now exempt peer review proceedings conducted in specified teaching

hospitals and facilities, and licentiates engaged in postgraduate medical education under the auspices of a medical school approved pursuant to section 2084 of the Business and Professions Code. The amendments also provide that the provisions of the bill opting out of the federal Health Care Quality Improvement Act of 1986 on peer review shall be null and void in the event that Congress enacts legislation declaring that the federal law is supplemental to and not preemptive of any immunity or due process right provided by California statutory or decisional law. This bill, which is now an urgency bill, passed the Senate on May 18 and is pending in the Assembly Judiciary Committee.

AB 184 (Speier), which would change the Board's name to the "Medical Board of California," passed the Assembly on June 7 and is pending in the Senate Business and Professions Committee.

AB 675 (Speier), as amended May 30, would add the charging of an excessive fee for professional services to the existing grounds for disciplinary action against physicians, and would authorize the recovery of costs from specified complainants for investigating a violation of the provision. This bill is pending on the Assembly floor at this writing.

SB 37 (Doolittle), which would require physicians to explain to elective surgery patients the probability of a blood transfusion during surgery and the alternatives available, is pending in the Senate Business and Professions Committee.

SB 1162 (Stirling), which 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 a peer review body required to report to BMQA under section 805 of the Business and Professions Code, is still pending in the Senate Business and Professions Committee.

SB 1163 (Stirling), which would have strictly regulated physician advertising of specialties and training, failed passage in the Senate Business and Professions Committee on May 8.

SB 711 (Greene), which would require DMQ to consider specified factors in exercising its authority to discipline a physician for repeated acts of clearly excessive prescribing, passed the Senate on May 25 and is pending in the Assem-

bly Health Committee at this writing.

AB 2122 (Allen), which would redefine the term "peer review body"; require section 805 reporting by the chief executive officer or administrator of a covered facility; and require reporting of a licentiate's leave of absence following notice of an impending investigation, is pending in the Assembly Health Committee.

AB 1729 (Chandler), which would make it a misdemeanor for any person who subverts or attempts to subvert any examination, is pending in the Assembly Ways and Means Committee.

AB 1565 (Sher), as amended June 5, would make the section 805 reporting requirement applicable to a medical or professional staff of a designated post-surgical recovery care demonstration project. It would also apply discovery immunities to peer review records or proceedings of clinics, as defined. This bill is pending in the Assembly Judiciary Committee.

LITIGATION:

In a May 19 ruling on BMQA's motion for summary judgment in *Le Bup Thi Dao v. BMQA*, No. 876321 (San Francisco Superior Court), the court ruled against BMQA in holding that the agency is subject to suit under section 1981 of the federal civil rights statutes (42 U.S.C. section 1981). The court also ruled against plaintiffs—several post-1975 Vietnamese physicians represented by the Center for Public Interest Law—in finding that the individually-named defendants (DOL members and staff) are entitled to immunity from damages (including punitive damages), in that the defendants' conduct in "insisting upon additional verification or the adequacy of the curriculum at the University of Saigon Medical School" did not violate "clearly established statutory or constitutional rights" of the plaintiffs, who were denied physician licenses for a two-year period after successfully completing all examination and residency requirements of California law. The court denied the remainder of BMQA's lengthy motion, finding that the remaining issues were not properly presented for adjudication.

Both sides petitioned the First District Court of Appeal for a writ of mandate to reverse the portions of the ruling adverse to them; the appellate court denied both petitions. Both sides subsequently appealed to the California Supreme Court; that court stayed the scheduled June 5 trial date pending its consideration of the petitions. (See



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CRLR Vol. 7, No. 4 (Fall 1987) pp. 53-54 and Vol. 7, No. 2 (Spring 1987) p. 1 for extensive background information on this case.)

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:

Exam Security and Administrative Recommendations. At its April 18 meeting in San Francisco, AEC announced the adoption of policies and procedures specifically designed to prevent the occurrence of a wide variety of exam security problems. The new procedures are AEC's initial response to the scandal which has plagued the Committee since the arrest of former AEC member Dr. Chae Woo Lew for allegedly selling AEC's licensing exam for a number of years in exchange for bribes totalling \$500,000. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 64 for background information.)

The policies adopted include the following: (1) only AEC staff shall retain possession of the questions and the answers to AEC's licensing exam; (2) Committee members will not translate exam questions and answers, and all translation will not be performed by a single person; (3) no item-writer will supply more than 20% of the total questions for any one exam; (4) no single individual will control every stage of exam development; (5) all answers will be randomized after final review and there will be no subsequent review after the scrambling of the answers; (6) all

Korean items used prior to the 1989 exam must be retranslated; (7) each practical exam will receive two separate reviews by two different examiners; (8) the following classes of people may not serve as examiners during the preparation of the written examination: (a) individuals employed by or with identifiable affiliations with AEC-approved schools, and (b) tutorial trainers whose students will be taking the upcoming examination; (9) all individuals involved in the examination process should be approved by AEC's Exam Subcommittee; (10) the Examination Subcommittee will review all existing questions and translations in the item bank; and (11) the quality and security of the examination will remain the Committee's first priority, and the frequency of examinations will be increased only if quality and security are assured. These policies have been forwarded to the Central Testing Unit of the Department of Consumer Affairs for comment.

Proposed Regulations. On March 10, AEC submitted proposed new regulatory sections 1399.462 and 1399.480-.486, and amendments to sections 1399.450-.451 and 1399.480, Chapter 13.7, Title 16 of the California Code of Regulations (CCR), to the Office of Administrative Law (OAL) for review. These changes would establish standards for continuing education of acupuncturists, set a fee for approval of continuing education course providers, and set forth requirements for office conditions and treatment procedures, including sterilization and disposal of needles. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 65 and Vol. 8, No. 2 (Spring 1988) p. 64 for a complete description of these regulations.) On April 10, OAL notified AEC of its disapproval of this regulatory action due to noncompliance with the necessity, clarity, and consistency standards of Government Code section 11349.1, and with the procedural requirements of the Administrative Procedure Act.

Also, OAL again disapproved AEC's resubmitted proposed regulatory sections 1399.425, 1399.426, and 1399.436, regarding acupuncture training programs, for lack of clarity. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 63 and Vol. 9, No. 1 (Winter 1989) p. 53 for further information.)

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 63:

SB 654 (Torres), which would require certain group health care service plans,

including those covering public employees, to offer acupuncture coverage, is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 633 (Rosenthal), which would require AEC to prepare and administer the licensure examination twice a year at six-month intervals, passed the Senate on May 26 and is pending in the Assembly Health Committee.

AB 2367 (Filante), as amended May 25, would require the Auditor General to review the examination process of all Department of Consumer Affairs boards to ensure examination integrity and security. This 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 backgrounds of AEC licensees. AEC's examination would be administered by independent consultants with technical advice and assistance from the acupuncturist members of the Committee. This bill is pending in the Assembly Ways and Means Committee at this writing.

RECENT MEETINGS:

At its April 18 meeting, AEC authorized its staff to seek an augmentation of up to \$100,000 in fiscal year 1989-90 to contract with an outside consulting firm to establish a process for developing, creating, and scoring all future exams. (See *supra* LEGISLATION for summary of related bill, AB 2367.)

In an April 20 letter to Assemblymember Filante, AEC Chair Lindsey Cahill reported that AEC has directed the Attorney General's Office and BMQA's investigative staff in Los Angeles to closely monitor events related to the alleged sale of examination answers by former AEC member Dr. Chae Woo Lew, now under investigation by the Los Angeles County District Attorney's office. Cahill stated that the Committee expects the Attorney General's Office to file disciplinary charges against the initial group of fifteen licensees who have pled guilty to charges of buying the exam and to advise AEC as to its recommendations on proposed penalties.

At the same meeting, an AEC member stated that if the licensees pled guilty, then AEC has authority to take disciplinary action so long as the crime is related to the practice of acupuncture. However, AEC concluded that it must conduct additional investigations, review the court documents, and then, after the documents are sent to the Attorney General, Executive Officer Jon Diamond



would authorize disciplinary action. AEC members also indicated that they will not discuss these cases because the licensees under investigation are entitled to due process.

A motion was made and seconded to appoint an individual Committee member to monitor the investigation of licenses obtained by fraud and/or misrepresentation. That individual would have the authority to receive specific investigatory information and would be disqualified from sitting in judgment on any licensee about whom specific information had been received. After lengthy discussion, this motion failed. Historically, the AEC chair has monitored this type of action and is in a position to receive confidential information. Cahill indicated that she will give status reports on this issue and report fully to AEC.

On May 4, the California Acupuncture Association (CAA) sent a letter to Governor Deukmejian supporting a review of all AEC actions to determine how this breach in examination security could have occurred, requesting the Governor's assistance in placing Executive Director Jon Diamond on extended administrative leave, and suggesting that the educational and ethnic mix of the AEC be balanced to better reflect the diversity of the profession.

The CAA has also asked Assembly Speaker Willie Brown Jr. for his support in bringing about the immediate suspension of the licenses of any licensee implicated in securing a license by fraud or deceit as set forth in Business and Professions Code sections 4955 and 4956.

FUTURE MEETINGS:

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

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 dispens-

ing. 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:

Regulation Change. On June 2, BMQA's Division of Allied Health Professions held a public hearing to receive comments on a proposed amendment to section 1399.119(d), Chapter 13.3, Title 16 of the California Code of Regulations. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 53 for background information.) The amendment would have required 100% supervision by a licensed supervising dispenser only for temporary HADEC licensees who fail the practicum or who fail the written exam more than once. However, DAHP declined to adopt the proposed amendment.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 64:

AB 459 (Frizzelle), which would allow a licensee to renew his/her license after an unlimited period of delinquency without reexamination, has become a two-year bill.

SB 1324 (Rosenthal), which would authorize the issuance of a temporary license to a hearing aid dispenser applicant licensed in another state under specified circumstances, is pending in the Assembly Health Committee.

FUTURE MEETINGS:

To be announced.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Steven Hartzell (916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 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:

New Executive Officer. In early May, PTEC met to conduct final interviews and select a new executive officer to replace Acting Executive Officer Rebecca Marco, who is leaving for another agency. The Committee selected Steven Hartzell, formerly the Assistant Executive Officer of BMQA's Respiratory Care Examining Committee. PTEC Chair James Sibbet praised Hartzell's many years of experience in the state's regulatory system and his computer and technological skills, which will facilitate PTEC's growth in both licensing and enforcement.

Impaired PT Program. The Committee has expressed concern about the increasing need for a program to help PTs impaired by abuse of drugs or alcohol. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 65 for background information.) Chet Pelton, Program Manager of BMQA's Diversion Program, spoke to the Committee at its May 12 meeting regarding the possibility of creating a program for impaired physical therapists. PTEC Chair Sibbett volunteered to investigate the feasibility of including PTs in BMQA's existing program.

Regulatory Hearing. At its May meeting, PTEC held a public hearing to solicit comments on two proposed regulatory actions. Following the hearing, PTEC once again adopted proposed sections 1399.25-.29, Chapter 13.5, Title 16 of the California Code of Regulations, to implement its authority to assess citations and fines for violations of its statutes and regulations. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 64-65 and Vol. 9, No. 1 (Winter 1989) p. 54 for background information.) PTEC also approved an amendment to section 1398.28, which would change the Committee's examination vendor from Professional Examination Service to Assessment Systems, Inc. (ASI). (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 54-55 for background information.)

At this writing, the rulemaking file on these two proposed changes is being prepared for submission to the Office of Administrative Law.



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LEGISLATION:

AB 2514 (Roos) would provide that the examination and reexamination fees for the PTs and PTAs shall be the actual cost to the Committee of purchasing, administering, and grading the examination. This bill is pending in the Assembly Ways and Means Committee.

AB 459 (Frizzelle), which would allow a licensee to renew his/her license after an unlimited period of delinquency without reexamination, has become a two-year bill.

AB 1245 (Floyd) would have enacted the Occupational Therapy Practice Act, created the Occupational Therapy Board, and provided for the regulation and licensing of occupational therapists by that board and BMQA's Division of Allied Health Professions. This bill failed passage in the Assembly Health Committee on May 9.

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), the court is reconsidering its earlier rulings on motions for summary adjudication in favor of BMQA/PTEC and the California Medical Association. A status conference was scheduled for July 7. At the May meeting, PTEC members again expressed concern about the mounting cost of the suit and the impact such an expense will have on the Committee's enforcement efforts. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 65; Vol. 9, No. 1 (Winter 1989) p. 54; and Vol. 8, No. 4 (Fall 1988) p. 63 for background information on this lawsuit.)

RECENT MEETINGS:

At the May 12 meeting, Acting Executive Officer Becky Marco presented the Committee with a letter that would direct all professional physical therapy schools in California to use equal standards for both domestic and foreign-trained physical therapists in evaluating and grading their course work. The Committee approved the letter.

At the same meeting, PTEC reviewed a memo from the Department of Consumer Affairs regarding inappropriate yellow page listings and advertising by PTs. Staff was directed to follow up the result of the Department's findings, deliberations, and conclusions.

FUTURE MEETINGS:

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:

Regulatory Changes. On April 14, the PAEC voted to approve two proposed regulatory changes which will give approved PA training programs wider discretion to grant credit for prior educational and clinical experience. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 65 for background information.) The Committee voted to repeal section 1399.530(d) and amend section 1399.531(c), Chapter 13.8, Title 16 of the California Code of Regulations. These changes await consideration and approval by the Office of Administrative Law.

As a result of Attorney General Opinion 88-303 (see CRLR Vol. 9, No. 2 (Spring 1989) p. 65 and Vol. 9, No. 1 (Winter 1989) pp. 55-56 for background information), the PAEC has been working with the California Academy of Physician Assistants (CAPA) on proposed draft amendments to the PAEC's

regulations. The Committee seeks to clarify the scope of practice of PAs, specifically addressing the types of medical services a PA may initiate, and the types of duties a supervising physician may delegate to a PA.

The draft regulatory amendments—which were reviewed for the first time by BMQA's Division of Allied Health Professions at its June 2 meeting—would explicitly authorize PAs to initiate and transmit orders for laboratory and other diagnostic tests and procedures, therapeutic services, medications, and other services delegated by the physician. In emergency situations, a PA would be allowed to order as well as administer medication or procedures necessary to save the life of a person, while attempting to obtain additional professional assistance. The draft regulations also stress that orders given and tasks performed by the PA shall be considered the same as if they had been given and performed by the supervising physician.

The draft regulations will be further refined and modified before they are officially published for public comment.

LEGISLATION:

AB 1912 (N. Waters), as amended May 17, would authorize PAs to sign death certificates in a skilled nursing or immediate care facility, under the supervision of the physician last in attendance. The PA would be required to immediately notify the coroner in such an event. Additionally, the bill would allow PAs to perform examinations required of applicants for a driver's license. At this writing, AB 1912 is pending in the Assembly Ways and Means Committee.

AB 459 (Frizzelle) would enable licensees of agencies within the Department of Consumer Affairs, including the PAEC, to renew their licenses without reexamination at any time after license expiration, regardless of the length of license renewal delinquency. The PAEC disapproves of this bill, which is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

RECENT MEETINGS:

At its April meeting, PAEC discussed the recent report of the Center for Public Interest Law entitled "Physician Discipline in California: A Code Blue Emergency" (see CRLR Vol. 9, No. 2 (Spring 1989) p. 1 for a condensed version of that report), and the problems BMQA has been experiencing regarding enforcement. Due to an increased number of complaints and a burgeoning case back-



log criticized by the Legislative Analyst, BMQA has proposed some changes to its investigatory priorities and procedures (see CRLR Vol. 9, No. 2 (Spring 1989) p. 60 for background information). PAEC did not feel that the changes would affect the handling of PA investigations.

Discussion of PAEC's proposed budget for fiscal year 1989-90 focused on a possible cut equivalent to two-tenths of a staff person. Although this cut might not appear significant, it concerns the Committee for two reasons. First, PAEC's existing staff is relatively small as it is; second, as work proceeds on implementing the diversion program required by AB 4510 (Waters), the Committee was considering hiring a part-time person to aid in this task. A budget cut in existing staff would preclude any new additions. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 65 and Vol. 8, No. 4 (Fall 1988) p. 63 for background information on the diversion program.)

Finally, CAPA representative Ann Davis reported that most medical insurance now covers PA costs in hospitals, health-manpower shortage areas, and possibly other areas as well.

FUTURE MEETINGS:

September 19 in Los Angeles.
November 17 in Monterey.

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.

MAJOR PROJECTS:

Enhanced Physician Discipline Bill. BPM Executive Officer Carol Sigmann is taking an active role in monitoring and suggesting amendments to SB 1434 (Presley), the omnibus bill which would significantly enhance the detection ability

and authority of the physician discipline system applicable to licensees of BMQA and BPM. The bill is an outgrowth of the Center for Public Interest Law's critical report entitled "Physician Discipline in California: A Code Blue Emergency." (See CRLR Vol. 9, No. 2 (Spring 1989) p. 1 for condensed version of that report.)

Sigmann sent a May 8 letter to Senator Presley expressing BPM's conceptual support for the bill, especially its provisions which would strengthen existing section 805 of the Business and Professions Code, which requires reporting of peer review actions to BMQA/BPM; and its amendment of section 2307 of the Code, to require former licensees whose licenses have been revoked to wait at least three years before they may petition for reinstatement. While noting that the Board's position may change as the bill is amended, Sigmann stressed the Board's "positive and assertive role in the enforcement arena on behalf of health care consumers." She also noted that increased enforcement responsibilities would likely require a BPM dues increase from its current \$525 biennial level.

The Board was scheduled to discuss the May 22 version of SB 1434 at its June 9 meeting in San Diego. (See *supra* agency report on BMQA for additional information on SB 1434.)

LEGISLATION:

SB 1434 (Presley), as amended May 22, would significantly enhance the ability of BMQA/BPM to detect incompetent or impaired physicians/podiatrists by requiring improved reporting of malpractice judgments and settlements by insurance companies and courts, adverse peer review actions by hospitals, felony charges against BMQA/BPM licensees by district attorneys, and negligence detected by coroners conducting autopsies. Among other things, it would also create a Medical Quality Panel of specialized administrative law judges within the Office of Administrative Hearings; these judges would preside over all discipline proceedings of BMQA/BPM, and would be authorized to impose interim suspension to prevent an incompetent/impaired practitioner from continuing to practice medicine during the often lengthy disciplinary proceedings. This bill is pending in the Senate Judiciary Committee.

SB 1162 (Stirling) would provide that it constitutes unprofessional conduct for a physician to perform a surgical procedure employing the use of conscious sedation, regional anesthesia, or general an-

esthesia outside the auspices of a peer review body unless certain specified conditions are met. This bill is pending in the Senate Business and Professions Committee.

The following is a status update of bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 66:

AB 2459 (Klehs), which would provide that a certificate to practice podiatric medicine would authorize a podiatrist to use the title "podiatric physician and surgeon," passed the Assembly on June 7 and is awaiting committee assignment in the Senate at this writing.

AB 402 (Roybal-Allard), as amended March 30, would clearly exempt from California licensing provisions all out-of-state physicians and health care practitioners who provide health care during an officially declared state of emergency. This bill passed the Assembly on April 20 and is pending in the Senate Business and Professions Committee.

AB 459 (Frizzelle), which would enable licensees who have let their licenses lapse for more than five years to renew their licenses without reexamination, has become a two-year bill.

AB 675 (Speier), which would add the charging of an excessive fee for professional services as grounds for disciplinary action of physicians, is pending in the Assembly Health Committee at this writing.

FUTURE MEETINGS:

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.

Governor Deukmejian recently appointed Robert R. Kiley, the president of a public relations firm, and Louis E. Jenkins, a psychology professor at Pepperdine University, to the Committee.

MAJOR PROJECTS:

Proposed Fee Increases. PEC's pro-



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posed regulatory changes to increase its fee for licensure examinations and to establish a fee for biennial renewal of an inactive license have been submitted to the Office of Administrative Law (OAL) for approval. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 67 for background information.) The proposals would amend section 1392, Chapter 13.1, Title 16 of the California Code of Regulations. The licensure exam fee would increase from \$100 to \$150, while the inactive license renewal fee would be established at \$40.

Alcohol and Chemical Dependency Training. PEC's proposed regulations which would require psychologists to receive training in alcohol and chemical dependency detection and treatment have also been submitted to OAL for approval. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 67 and Vol. 9, No. 1 (Winter 1989) p. 57 for background information.)

LEGISLATION:

AB 1016 (Moore) would provide that Medi-Cal outpatient psychology services may be provided by a psychologist or by any provider trained to provide the services, such as a psychological intern, while under the supervision of a physician. The bill is pending in the Assembly Health Committee.

SB 1480 (Keene), as amended May 18, would amend section 800 of the Business and Professions Code, to enable PEC licensees who are the subject of disciplinary complaints to obtain access to the substance of the complaint, but not to the identity of the complainant. This bill is pending in the Assembly Health Committee.

AB 1444 (Margolin) would provide that clinical psychologists are not liable in any action arising out of a refusal to render emergency services if the refusal is based on a determination that an emergency medical condition does not exist or that the health facility does not have the appropriate facilities or qualified personnel to render services. This bill is pending in the Assembly Ways and Means Committee.

AB 2422 (Polanco) would assess a 10% surcharge on the licensing fees of a number of health professions, including psychologists. The revenues would be used to fund a financial assistance project to assist bilingual and bicultural students considering careers in the mental health professions. This bill is pending in the Assembly Ways and Means Committee.

AB 889 (Tucker) would add "psychological consultant" to the list of titles which may not be used by an individual

unless he/she is a licensed psychologist. This bill passed the Assembly on May 25 and is pending in the Senate Business and Professions Committee.

AB 1729 (Chandler) would make subverting or attempting to subvert any licensing examination a misdemeanor. A person found guilty would be liable for costs to the agency up to \$10,000. These penalties would be in addition to the various agencies' current powers to deny, suspend, revoke, or otherwise retract a license after such a violation. This bill is pending in the Assembly Ways and Means Committee.

SB 190 (Morgan) would create the Council for Private Postsecondary Education, consisting of fifteen members and responsible for licensure and regulation of private postsecondary educational institutions. The institutions would be prohibited from issuing academic or honorary degrees or offering courses in education unless they demonstrate compliance with prescribed minimum standards and are approved by the council. The council could revoke an institution's accreditation for noncompliance and persons willfully violating these provisions could face criminal penalties. PEC strongly supports this bill, which is pending in the Senate Appropriations Committee.

SB 194 (Morgan) is related to SB 190 and would require the California Postsecondary Education Commission to recommend criteria and standards to be used in periodic review of associations that accredit educational institutions. This bill passed the Senate on May 26 and is pending in the Assembly Education Committee.

The following is a status update on bills which were discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 67:

SB 1004 (Boatwright), which would make it a misdemeanor or felony crime for a psychotherapist or a person holding him/herself out to be a psychotherapist to engage in sexual relations with a client or former client, is pending in the Assembly Public Safety Committee.

AB 459 (Frizzelle), which would enable licensees of agencies within the Department of Consumer Affairs to renew their expired licenses at any time without reexamination, has become a two-year bill.

AB 858 (Margolin), which would change the PEC's name to the Board of Psychology, passed the Assembly on May 18 and is pending in the Senate Business and Professions Committee.

AB 1266 (Tucker) would enact the Alcohol and Drug Counselors License

Law, and would require those wishing to become licensed to complete 315 hours or 21 semester academic units of approved alcohol and drug education training. This bill is still pending in the Assembly Health Committee.

LITIGATION:

In *Marlene F. v. Affiliated Psychiatric Medical Clinic*, No. S003030 (April 10, 1989), the California Supreme Court ruled that a mother may sue a therapist for negligent infliction of emotional distress for the trauma she suffers when she learns that the therapist has been molesting her son. The narrow holding requires that both the mother and child be under the therapist's care because the molestation breaches the therapist's duty of care to the mother.

In 1980, the plaintiff went to a health clinic to seek counseling for her son. The treating therapist, believing that the problems arose from the relationship between the boy and his mother, also began treating the plaintiff. After two years of counseling, the mother believed that her son had been molested by the therapist. She confronted the health clinic, which denied any wrongful behavior. The therapist later wrote the mother stating that he would no longer treat minors, and he would undergo psychotherapy.

The mother brought suit against the clinic, its owner, its clinical director, and the treating therapist for negligent infliction of emotional distress. Writing for the majority, Justice Arguelles acknowledged that parents are not usually entitled to recovery for emotional distress stemming from their children's injuries unless they witness the injury. However, due to the patient-therapist relationship, the majority held that the therapist "clearly knew or should have known in each case that his sexual molestation of the child would directly injure and cause severe emotional distress to his other patient, the mother, as well as to the parent-child relationship that was also under his care." Justice Arguelles also wrote a concurring opinion arguing that the mother should be able to recover for intentional infliction of emotional distress.

While recognizing that the therapist was liable for damages, a concurring opinion authored by Justice Eagleson argued that recovery should be based on professional malpractice, not on negligent infliction of emotional distress.

RECENT MEETINGS:

At its May 13 meeting in Los Angeles,



the PEC voted to adopt accommodation procedures for disadvantaged licensure examination candidates. If proper notice supported by medical verification is given by the candidate, reasonable accommodations shall be made. Accommodations would include a reader, extra exam time, Braille tests, interpreters, or other appropriate measures. The policy will be adopted on a trial basis and later reviewed by the PEC.

FUTURE MEETINGS:

September 15-16 in San Diego.
November 3-4 in Monterey.

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. Modifications to regulatory sections 1399.170, 1399.171, 1399.172, 1399.174, 1399.175 and 1399.176 were approved by the Committee during its April 7 meeting. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 68; Vol. 9, No. 1 (Winter 1989) p. 58; and Vol. 8, No. 4 (Fall 1988) p. 66 for background information.) Rejected by the Office of Administrative Law (OAL) on January 23, the regulations were modified to comply with OAL's clarity, consistency, and authority standards.

The modified changes will now be resubmitted to OAL for approval. The new regulations will impose stricter requirements regarding registration, supervision, and training programs for speech pathology and audiology aides.

Planned Regulations on Penalties for Violations. A subcommittee consisting of SPAEC members Betty Williams,

Jackie Graham, and Ellen Rosenblum-Mosher is currently assembling a proposed draft of new regulations creating penalties for violations of the licensure act and regulations which govern the practice of speech pathologists and audiologists. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 68 for background information.) The Committee was scheduled to discuss the proposed regulations at its July meeting.

LEGISLATION:

AB 459 (Frizzelle) would provide that any license issued by any agency within the Department of Consumer Affairs may be renewed at any time after its expiration without limitation as to time, and without requirement of re-examination. SPAEC currently requires a new license to be obtained if a person fails to renew his/her license within five years after its expiration. The Committee is opposed to this bill, which is currently a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 1245 (Floyd) would have provided for the licensing and regulation of persons engaged in the practice of occupational therapy by the Occupational Therapy Board and the Division of Allied Health Professions of the Board of Medical Quality Assurance. Currently, occupational therapists must meet certain qualifications but are not licensed. This bill was defeated in the Assembly Health Committee on May 9.

SB 1324 (Rosenthal) would require out-of-state applicants for a hearing aid dispenser's license to hold a license from another state, which license has not been subject to formal disciplinary action by another licensing authority, and the applicant must have been engaged in the fitting and sale of hearing aids for two years prior to application. At its April meeting, the Committee voted to support this bill, which passed the Senate on May 26 and is pending in the Assembly Health Committee.

RECENT MEETINGS:

During the Committee's April 7 meeting in Sacramento, newly elected SPAEC Chair Gail Hubbard addressed some of the Committee's goals for 1989-90. Several subcommittees have been appointed by Ms. Hubbard to focus on various areas including teacher credentialing, continuing education, and the conflicts between industrial safety regulations and licensing procedures. Ms. Hubbard also discussed plans to address the need for alternative services in rural areas where

speech pathologists and audiologists are not available.

During the same meeting, Executive Officer Carol Richards reported that SPAEC's 1989-90 budget had been approved by a Senate budget subcommittee. Ms. Richards also voiced concern about aides working subsequent to application denial or pending a Committee request for additional information. The Committee decided that in cases where additional information is requested and not submitted within a reasonable period of time, a cease and desist letter will be sent to the applicant.

Also appearing at the April 7 meeting was Margaret McNally, Executive Officer of the Hearing Aid Dispensers Examining Committee. Ms. McNally explained SB 1324 to SPAEC members (*see supra* LEGISLATION). After considering Ms. McNally's presentation, the Committee voted to support the bill.

FUTURE MEETINGS:

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