



# REGULATORY AGENCY ACTION

meeting, Education Committee Chair Raven presented a report based in part on those hearings. She recommended that section 2620, Chapter 26, Title 16 of the California Code of Regulations, should be amended to specify that the required degree or certificate must be in landscape architecture. BLA endorsed that amendment.

The Education Committee also recommended that no more than three years of education should be counted towards the experience requirement and that the remaining three years be served in an office of a landscape architect. That motion failed for a lack of a second.

The Committee next recommended the use of standardized forms to verify work experience and a requirement that ten of twelve task areas be signed off by a supervising licensee, attesting to the candidate's experience. Various task areas were discussed, but the idea died for lack of support. The BLA did, however, approve further study of the need for a continuing education requirement. It also approved continuing the use of the 1983 Accreditation Standards for Certificate Programs in Landscape Architecture.

*Performance Review and Resignation of Executive Officer.* In open session on March 18, the Board discussed the performance of Executive Officer Joe Heath. It was the consensus among Board members that major improvements in the Executive Officer's performance—in the areas of relationships, coordination, personal qualities, budget administration, supervision, and management—should be required by July 1. Intermediate reviews were scheduled; however, on April 27, Heath tendered his resignation to the President of the BLA, effective September 1.

## LEGISLATION:

*SB 2810 (Marks)* was amended on April 6 to add certain fee provisions affecting architects licensed by the state Board of Architectural Examiners. As it affects landscape architects, the amendment increases the maximum amount chargeable for delinquency fees to \$150 and for renewal fees to \$300 (corresponding to the original certification fee increase). This bill passed the Senate on May 26 and is currently pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*SCR 68 (Campbell)* introduced on February 8, would urge the Department of General Services to use drought-resistant plants for landscaping new state buildings. This resolution was adopted by the Senate on May 12 and is

currently pending before the Assembly Committee on Governmental Efficiency and Consumer Protection.

## RECENT MEETINGS:

At its March 18 meeting in Pomona, legal counsel Don Chang reviewed the open meeting requirements applicable to state agencies under the Bagley-Keene Open Meetings Act. Advice was given on the proper use of open and closed sessions and the form of the agenda.

At the request of Assemblymember Robert Campbell, the Board also voted to support ACR 96 (Campbell), which proclaims April 21 as "John Muir Day" in honor of Muir's efforts resulting in nationwide awareness of conservation and the National Park system. That resolution has since been chaptered.

At its May 5 meeting in Monterey, the Board tabled a proposed study of landscape design requirements for the purpose of developing guidelines. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 60 for background information.)

## FUTURE MEETINGS:

September 2 in San Diego.

November 4 in Los Angeles.

## 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 (DAHPP) 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, audiolo-

gists, 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:

*License Renewal Fee Increase.* At its June 2 meeting, the DOL approved staff's request to seek a regulatory change which would increase BMQA's biennial physician license renewal fee from its current level of \$255 to \$290. Section 2435 of the Business and Professions Code requires BMQA to fix licensing fees so that the reserve balance in the Board's contingent fund shall be equal to approximately four months of annual authorized expenditures, and staff projected that if renewal fees were not increased above \$255, the Board will fall well below the four-month requirement by 1989.

The DOL also approved a proposed 10% increase in initial application fees.

*Proposed Regulatory Changes.* Also at its June 2 meeting, the DOL con-



ducted a public hearing on two proposed regulatory changes. The Division has proposed an amendment to Section 1321, Title 16 of the California Code of Regulations (CCR), which would define acceptable postgraduate training programs; require licensure applicants to be formally accepted to such programs; and require applicants to complete one "continuous" year of such a program in order to be eligible for licensure. Proposed new section 1315 would require applicants undergoing medical school core clinical rotations to complete the minimum weeks required in each subject in a "contiguous" fashion.

Several witnesses, including representatives from the Autonomous University of Guadalajara and the California Medical Association, submitted comments on the proposed changes. Department of Consumer Affairs counsel Greg Gorges suggested that the Division consider and respond to the comments, and possibly modify proposed sections 1315 and 1321 in time for another public hearing scheduled for the DOL's September meeting. Dr. Gough and Mr. Mallel were appointed to a subcommittee to consider the comments and prepare any necessary modifications.

In a discussion of section 1324 of its regulations (regarding the postgraduate training requirement for some foreign medical graduates), the DOL decided to seek a regulatory change to eliminate section 1324's current requirement on certain hospitals offering section 1324 clinical service training programs. Presently, section 1324(a)(2) allows foreign medical graduates to satisfy their postgraduate training requirements by completing clinical service programs at approved hospitals which have a minimum capacity of 100 beds and an average occupancy rate of at least 70%. Because of recent decreases in inpatient hospitalization and some teaching institutions' inability to maintain a 70% occupancy rate, the Division recommends that the 70% figure be deleted.

## LEGISLATION:

**AB 3766 (Connolly)**, as amended June 9, would authorize courts to order medical practitioners charged with a felony violation of specified controlled substances laws to surrender all triPLICATE prescription blanks in the practitioner's possession. This bill passed the Assembly on June 9 and is awaiting Senate committee assignment at this writing.

**AB 4018 (Filante)**, as amended on April 18, would provide that persons

not licensed as physicians in California but who are in the medical corps of the armed forces and provide medical services on a federal reservation may engage in a residency, fellowship, or clinical training program at a health facility not on a federal reservation under specified conditions. This bill is pending in the Senate Business and Professions Committee.

**AB 4507 (Harvey)** would provide that when nonemergency surgery is to be performed on an individual, the physician performing the surgery may require that the patient be tested for antibodies to the probable causative agent of AIDS, and that the results be disclosed to the physician and members of the surgical team. This bill is pending in the Assembly Health Committee.

**AB 4508 (Harvey)** would amend existing law prohibiting the disclosure of AIDS test results without the written authorization of the test subject. This bill would exempt from the written authorization requirement disclosure of test results for antibodies to the probable causative agent of AIDS to health care personnel who work directly with the patient, but only for the purpose of providing patient care. This bill is pending in the Assembly Health Committee.

**AB 4679 (Speier)**, as amended May 17, would require BMQA to contract with a private entity to perform a study to evaluate the amount of hours currently being worked by physicians participating in postgraduate training; evaluate the proper number of working hours necessary to adequately train physicians and surgeons; make recommendations as to what working hour limits should be imposed by law on residents participating in postgraduate training; analyze the economic impact of reducing the current number of hours being worked by those physicians to the recommended working hour limits; evaluate specified model criteria limiting the hours worked; and submit a written report to the Board by January 1, 1990. This bill is pending in the Assembly Health Committee.

**AB 4682 (Isenberg)**, as amended May 16, would state that the holders of medical doctor and doctor of chiropractic degrees shall be accorded equal professional status as health practitioners, and would prohibit health facilities and other entities from discriminating against the holders of those degrees with respect to employment or the provision of services within their scope of practice. This bill is pending in the Assembly Health Committee.

**SB 859 (Montoya)** would prohibit

hospitals from requiring foreign medical graduates applying for postgraduate training to satisfy any requirements other than those required of U.S. and Canadian graduates. An April 12 hearing in the Assembly Health Committee was postponed at the request of the author.

**SB 1968 (Beverly)** would codify case law which states, among other things, that a physician has the duty to have and exercise that degree of learning and skill ordinarily possessed by reputable physicians practicing in the same or similar locality. This bill is pending in the Senate Judiciary Committee.

**SB 2491 (Montoya)**, as amended June 6, would further clarify the extent to which a health facility is prohibited from discriminating against a physician on the basis of whether he/she holds an MD or DO degree; would mandate specified procedures to ensure high standards of professional and ethical practices among physician and surgeon staff, including self-government; and would prohibit professional medical or osteopathic associations from requiring membership as a prerequisite for a physician to obtain staff privileges, employment, or a contract for services. This bill is pending in the Assembly Health Committee.

**SB 2495 (Roberti)**, as amended May 5, would require physicians to inform patients treated for breast cancer, by means of a standardized written summary, of other alternative efficacious methods of treatment before the performance of a biopsy. This bill is pending in the Assembly Health Committee. BMQA has taken a watch position; the California Medical Association (CMA) disapproves of the bill.

**SB 2565 (Keene)**, as amended April 4, would amend existing law which extends immunity from liability to hospitals and hospital medical staff for any disciplinary action taken or restriction imposed, which is required to be reported to BMQA under section 805 of the Business and Professions Code. SB 2565 would establish a specified procedure for the conduct of the peer review proceeding which must be followed in order for the immunity to apply. This bill is pending in the Assembly Health Committee.

**SB 2793 (Torres)**, as amended May 18, would require physicians who provide diagnostic radiological services to provide those services to licensed health care practitioners without discrimination on the basis of the practitioner's license classification. This bill was scheduled for a June 13 hearing in the Senate Business and Professions Committee.



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*SB 2852 (Watson)*, as amended June 2, would have specified the procedure for terminating the relationship between a primary care physician and a patient, and would have provided that a person who violates that provision shall be subject to a charge of unprofessional conduct by the appropriate licensing agency. This bill failed passage in the Senate on June 9.

The following is a status update on bills described in detail in CRLR Vol. 8, No. 2 (Spring 1988) at pages 62-63:

*AB 784 (Tucker)*, which would eliminate the option of completing core clinical rotations in a hospital with an approved family practice residency program, is still pending in the Senate Business and Professions Committee.

*AB 1164 (Speier)*, as amended June 6, would require BMQA to establish and maintain a toll-free telephone number to receive complaints from the public concerning the quality of medical practice. Previous language requiring the number to be posted in physicians' offices has been deleted.

At their June meetings, both DMQ and DOL voted to oppose the bill. DMQ members opined that a toll-free number is unnecessary because BMQA maintains regional offices throughout the state. DOL members Rider and Milkie objected to physicians shouldering the cost of the toll-free line (and potentially increased enforcement activities resulting from easier consumer access to BMQA). DOL public member Ray Mallel pointed out that many other occupational licensing agencies (including the State Bar) maintain toll-free consumer complaint lines, and urged support for the bill. *AB 1164* is pending in the Senate Business and Professions Committee.

*AB 2681 (Bane)*, regarding academic and clinical instruction prior to participation in a postgraduate residency program, is still pending in the Senate Business and Professions Committee.

*AB 2948 (Floyd)*, regarding use of sworn testimony in DMQ disciplinary proceedings, *AB 2949 (Floyd)*, regarding DMQ reporting and handling of disciplinary complaints, *AB 2951 (Floyd)*, requiring physicians to pay the costs of disciplinary actions taken against them, *AB 2952 (Floyd)*, regarding physician self-reporting of disciplinary actions against them to DMQ, and *AB 2953 (Floyd)*, authorizing DMQ to immediately suspend a physician's license for fourteen days, died without action in the Assembly Health Committee. While BMQA generally supported these bills,

the CMA took an "oppose" or "oppose unless amended" position on all of them.

*AB 3034 (Roos)*, which would direct the DOL, after January 1, 1990, to require physicians to take a course on AIDS if his/her practice may require knowledge in that area, is pending in the Assembly Ways and Means Committee. BMQA opposes this bill (see CRLR Vol. 8, No. 2 (Spring 1988) p. 63 for details).

*AB 3473 (Filante)*, as amended May 11, would extend "good samaritan" immunity from civil damages liability to physicians who serve on an "on-call" basis, as defined, to a hospital emergency room and who in good faith render emergency obstetrical services. This bill would apply to negligent acts or omissions. *AB 3473* is pending in the Senate Judiciary Committee.

*AB 4276 (Bronzan)*, which would prohibit physicians from utilizing conscious sedation except under specified circumstances, was scheduled for a June 28 hearing in the Assembly Health Committee.

*AB 4277 (Bronzan)*, regarding reporting by certain health facilities of denial, restriction, or revocation of staff privileges, is pending in the Senate Business and Professions Committee at this writing.

*AB 4387 (Bronzan)*, which would increase possible fines against physicians guilty of excessive prescribing, is still pending in the Assembly Health Committee.

*SB 645 (Royce)*, regarding DAHP establishment of standards for functions performed by medical assistants, is pending in the Assembly Ways and Means Committee.

*SB 1552 (Kopp)*, which would direct BMQA to consider requiring AIDS training in continuing education requirements, is still pending in the Assembly Health Committee.

*SB 2078 (Kopp)*, regarding the creation of the Dietetic Practice Examining Committee to provide for the licensing and regulation of persons who practice dietetic care, was referred to interim study by the Senate Business and Professions Committee.

### LITIGATION:

In *Patrick v. Burget*, No. 86-1145, 88 D.A.R. 6095 (May 16, 1988), the U.S. Supreme Court ruled that physicians may be liable under federal antitrust statutes for their activities on hospital peer review committees. Dr. Patrick, an Astoria, Oregon surgeon with hospital privileges at Astoria's only hospital, de-

clined an invitation to become a partner in the Astoria Clinic, and instead began an independent practice in competition with the Clinic. Thereafter, Dr. Patrick experienced difficulties in his professional dealings with Clinic physicians (respondents), and respondents filed a complaint against Dr. Patrick with the hospital. The hospital's peer review committee initiated a proceeding to revoke Dr. Patrick's privileges; during the course of the proceeding, Dr. Patrick resigned rather than risk termination.

During the course of the hospital proceeding, Dr. Patrick filed a lawsuit alleging that the partners of the Clinic had violated federal antitrust laws by initiating and participating in the hospital peer review proceeding to reduce competition rather than to improve patient care. A jury ruled in plaintiff's favor and awarded him damages in the amount of \$650,000, which was trebled under federal law. On appeal, the Ninth Circuit Court of Appeals reversed the judgment and held that respondents' conduct was immune from liability under the "state action" exemption to the federal antitrust laws.

The Supreme Court reversed and reinstated plaintiff's treble damages award. In order for the state action exemption to apply, respondents' challenged conduct must be clearly articulated and affirmatively expressed as state policy, and must be actively supervised by the state itself. The Court held that the "active supervision" prong of the two-part test was not satisfied, because Oregon's statutory scheme does not establish a state program of active supervision over peer review decisions. Neither the Oregon Health Division, the Board of Medical Examiners, nor the state judicial system are expressly authorized to review the fairness of peer review panel determinations to revoke or restrict hospital privileges.

In a footnote, the Court cited the Health Care Quality Improvement Act of 1986 (Public Law 99-660), which was enacted by Congress after the events in the *Patrick* case and which is not retroactive, but which insulates certain medical peer review activities from antitrust liability. During a discussion of the *Patrick* case at its meeting on June 3, the DMQ was briefed on SB 2565 (Keene), which would require due process protections in California peer review proceedings in exchange for immunity from liability under section 805 of the Business and Professions Code, and enable California to "opt out" of the immunity provided by Public Law 99-



660. (See *supra* LEGISLATION for details on SB 2565.)

In *California Association of Psychology Providers et al. v. Rank*, 88 D.A.R. 7027, No. B020113 (Second District Court of Appeal), the appellate court rejected a challenge by clinical psychologists to several Department of Health Services regulations and ruled that health facilities may require that all diagnoses and patient treatment plans be performed by physicians. (For a more detailed description of this case, see *infra* agency report on PSYCHOLOGY EXAMINING COMMITTEE.)

In a March 3 Attorney General's Opinion (No. 87-103, 88 D.A.R. 3054), Attorney General John Van de Kamp concluded that certified acupuncturists who are not licensed as physicians under the Medical Practice Act may not use the initials "OMD" or the title "Oriental Medical Doctor," without more, in advertising an acupuncture practice. However, he/she may use the initials or title in conjunction with further information which removes the implication that the acupuncturist is a licensed physician. (For a more detailed description of this case, see *infra* agency report on ACUPUNCTURE EXAMINING COMMITTEE.)

In *California Chapter of the American Physical Therapy Ass'n, et al. v. California State Board of Chiropractic Examiners, et al.*, the Sacramento Superior Court recently overruled the Board of Chiropractic Examiners' (BCE) objections to BMQA's complaint in intervention, denied BCE's demurrer, and ordered BCE to answer the complaint. Plaintiffs/intervenors challenge BCE's adoption of section 302 of its regulations, which defines the scope of chiropractic practice. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 63 and Vol. 8, No. 1 (Winter 1988) p. 60 for background information.)

#### RECENT MEETINGS:

At its June meeting in San Francisco, the DOL discussed a new July 1, 1990 statutory requirement that all applicants will be required to include four months of general medicine in the required year of postgraduate training. Several medical schools have inquired whether rotations through specific medical and pediatric subspecialties would be included in the "general medicine" category. Department of Consumer Affairs counsel Greg Gorges advised the DOL to decide exactly which subspecialties will be included in the definition of general medicine, and publish this infor-

mation in approved regulations. The DOL will study the issue and discuss it at a future meeting.

On April 26, the Board notified the legislature that it was late in submitting its final report on its site visits to foreign medical schools required by AB 1859 (Chapter 1176, Statutes of 1985). (See CRLR Vol. 8, No. 2 (Spring 1988) p. 61; Vol. 8, No. 1 (Winter 1988) pp. 59-60; Vol. 6, No. 4 (Fall 1987) p. 40; and Vol. 6, No. 2 (Spring 1986) p. 46 for background information.) The report was due on December 1, 1987, but has been delayed due to the complexities of making arrangements to visit medical schools in the United Kingdom, the Philippines, and Mexico, and drafting and approving individual site visit reports on each country's schools. The Board intended to submit its final report by July 1.

At its June meeting, the DMQ discussed the fact that coroners are not required to report to BMQA when medical malpractice is detected during an autopsy. Division staff will study this issue and report at a future meeting.

BMQA Diversion Program Manager Chet Pelton reported 22 new participants in the substance/alcohol abuse program, for a total of 214 participants as of May 1.

#### FUTURE MEETINGS:

September 15-16 in Sacramento.  
December 1-2 in San Diego.

#### ACUPUNCTURE EXAMINING COMMITTEE

*Executive Officer: Jonathan Diamond (916) 924-2642*

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

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

#### MAJOR PROJECTS:

*Attorney General's Opinion.* The Board of Medical Quality Assurance (BMQA), on behalf of the Acupuncture Examining Committee, requested an Attorney General's Opinion on the following question: may certified acupuncturists who are not licensed physicians and surgeons use the initials "OMD" and the title "Oriental Medical Doctor" in advertising practice? The opinion, filed on March 3 (88 Daily Journal D.A.R. 3054), concludes that a certified acupuncturist who is not licensed as a physician and surgeon under the Medical Practice Act may not use the initials "OMD" or the title "Oriental Medical Doctor," without more, in advertising an acupuncture practice. However, he/she may use the initials or the title in conjunction with further information which removes the implication that the acupuncturist is licensed as a physician and surgeon.

*Proposed Regulations Adopted.* At a public hearing on April 30 in San Diego, the Committee adopted several proposed changes to its regulations, which appear in Chapter 13.7, Title 16 of the California Code of Regulations (CCR). (See CRLR Vol. 8, No. 2 (Spring 1988) p. 64 for a complete description of the proposed regulations.) The Committee adopted amendments to section 1399.450, requiring sterilization equipment where nondisposable needles are used, and section 1399.451, establishing specific treatment procedures. Article 8 (commencing with section 1399.480) was added to establish continuing education (CE) requirements and standards for Committee licensees; additionally, section 1399.462 was adopted to establish a \$30 fee for approval of CE courses. Finally, Chapter 2-7 of Title 24 of the CCR was amended to require a sink with hot and cold running water to be located in or near each acupuncture treatment room.

#### LEGISLATION:

*SB 840 (Torres)* would have included acupuncturists as physicians for purposes of treating injured employees entitled to workers' compensation medical benefits. This bill has been dropped.

*SB 1046 (Montoya)*, as amended on June 9, would grant the Committee the authority to establish by regulation a system for the issuance to a licensee of a citation, which may include an order of abatement or an order to pay an administrative fine, pursuant to Business and Professions Code section 125.9. This bill is still pending in the Assembly Health



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## Committee.

*AB 4671 (Elder)*, as amended June 9, would provide that acupuncture educational and training programs approved by the Committee shall receive approval under section 94310.2 of the Education Code in the field of traditional oriental medicine within five years, or the Committee's approval of the program shall lapse. This bill would also authorize the Committee to renew a license even if the continuing education requirements are not completed, provided the requirements are completed prior to the next renewal period. This bill is pending in the Assembly Ways and Means Committee.

*SB 645 (Royce)* is opposed by the Committee. The measure would expand the authority of BMQA's Division of Allied Health Professions to adopt regulations which establish standards for additional support services to be performed by medical assistants. This bill is pending in the Assembly Ways and Means Committee at this writing.

*SB 2793 (Torres)* was set for a June 13 hearing in the Senate Business and Professions Committee. This bill would require physicians to provide diagnostic radiological services to all licensed health care practitioners without discrimination on the basis of the practitioner's license classification. Previous language authorizing the Committee to establish peer review committees was deleted.

## LITIGATION:

A lawsuit entitled *The Coalition for the Advancement of Acupuncture Practice, et al. v. Acupuncture Examining Committee*, No. 891325 (San Francisco Superior Court), was served on the Committee on April 28. The suit challenges the Committee's practical exam as being arbitrary and capricious.

In past months, unsuccessful examinees have complained to the Committee about its practical exam. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 64-65 for background information.) These complaints resulted in the scheduling of several public hearings before the Committee's Examination Procedure Task Force during the early part of 1988. The Task Force was in the process of reviewing the hearing testimony when this action was filed. As a result of this suit, the Task Force was advised not to issue or publicly discuss its report on the public hearings. The chairperson's report on the examination recommendations was also removed from the agenda at the Committee's April 30 meeting.

Plaintiffs in the action seek several forms of injunctive relief, including an order directing the Committee to provide examinees with a complete description of the practical exam, including the weight of the questions and an outline of all parts of the exam.

## FUTURE MEETINGS:

September 17 in Monterey.

December 3 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. The Board of Medical Quality Assurance performs the actual licensing of California's 2,500 hearing aid dispensers. The Committee is further empowered to hear all disciplinary matters assigned to it by the Board. 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 Changes.* At its March 26 meeting in San Francisco, HADEC unanimously adopted proposed changes to section 1399.141, Chapter 13.3, Title 16 of the California Code of Regulations, concerning continuing education (CE). (See CRLR Vol. 8, No. 2 (Spring 1988) p. 65 for background information.) There was no comment from the public on the proposed amendments, which include subsection (a)(1), requiring CE courses to contain information which is above the level required for licensure; subsection (a)(6), requiring all approved courses to be located in California or the Tahoe Basin; and subsection (c), reducing the CE provider application deadline from 90 days to 45 days before

the first day of the CE course. The rulemaking file on these amendments was to be submitted to the Office of Administrative Law in mid-June.

## LEGISLATION:

*AB 4695 (Tucker).* On April 26, Assemblymember Tucker introduced AB 4695 as an urgency statute. The measure would define the term "hearing aid fitters," provide for the registration of hearing aid fitters, and provide for their eventual licensure as hearing aid dispensers. Executive Officer Margaret McNally expressed alarm over the bill's attempt to re-regulate hearing aid dispensers through the less restrictive registration requirement for so-called "fitters." Ms. McNally further questioned how the bill could be introduced as "urgency" legislation. At this writing, HADEC has not yet taken any formal action in response to the measure. A May 24 hearing before the Assembly Health Committee was cancelled at the author's request.

*SB 645 (Royce).* At its March 26 meeting in San Francisco, HADEC voted to oppose SB 645, which is pending in the Assembly Ways and Means Committee at this writing. The bill would include unspecified technical support services among the duties medical assistants are authorized to perform under section 2069 of the Business and Professions Code, and would require BMQA's Division of Allied Health Professions (DAHP) to establish and administer standards for the additional technical services. HADEC opposes the bill because it would potentially broaden the scope of medical assistants' practice without defining services encompassed by the provision, and because it does not give regulatory agencies enforcement authority over activities authorized therein. HADEC fears that the bill could effectively expand the scope of practice of medical assistants into areas which may now only be performed by licensed individuals, including hearing aid dispensers who have demonstrated, and are continuously subject to, an established standard of competency.

*SB 2250 (Rosenthal)* passed the Senate on May 19 and is pending in the Assembly Health Committee. The bill would transfer the power and duty to hear and prosecute cases involving violations of law relating to hearing aid dispensing from BMQA's DAHP to HADEC. On June 1, SB 2250 was amended to include provisions of AB 3845 (Frizzelle), which would require licensed hearing aid dispensers, upon the con-



summation of a sale of any new or used assistive device, to deliver a written receipt providing the terms of any guarantee or written warranty made to the purchaser with respect to the hearing aid. The expanded SB 2250 was to be heard in the Assembly in late June. (For background information on SB 2250 and AB 3845, see CRLR Vol. 8, No. 2 (Spring 1988) p. 65.)

#### RECENT MEETINGS:

HADEC continues to address the problem of regulating the sale of "assistive listening devices" (ALDs). (See CRLR Vol. 8, No. 1 (Winter 1988) p. 62 for background information.) At its March 26 meeting in San Francisco, HADEC heard lengthy comment from members of the industry questioning HADEC's regulation of ALDs. The Committee agreed to make the matter a continuing agenda item. Counsel Greg Gorges suggested that the Committee take action beyond a continuing dialogue with ALD distributors. HADEC declined any immediate further policymaking.

HADEC has formed a subcommittee with the Speech Pathology and Audiology Examining Committee (SPAEC) to address the problem of advertising violations. The subcommittee circulated a draft of "guidelines for advertising by hearing aid dispensers" at HADEC's March meeting.

#### FUTURE MEETINGS:

August 20 in Irvine.  
November 5 in Monterey.

### PHYSICAL THERAPY EXAMINING COMMITTEE

*Executive Officer: Don Wheeler*  
(916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 8,600 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:

*Regulations.* On March 25, the Committee held a public hearing and adopted proposed changes to its regulations in Chapter 13.2, Title 16 of the California Code of Regulations (CCR). Section 1399.54 was amended to provide a specified reexamination fee which may be charged to physical therapists applying to perform electromyography. The Committee also voted to repeal section 1399.55, which applied to the 1985-87 license renewal cycle. Finally, section 1399.61(c) will be added to allow a physical therapist who has failed the certification examination not more than three times to perform tissue penetration for the sole purpose of undertaking remedial training. Such tissue penetration training shall be under the direct and immediate supervision of a certified physical therapist.

At this writing, the Committee has not yet submitted these regulations to the Office of Administrative Law (OAL) for approval.

*Citation and Fine Regulations.* PTEC has decided to temporarily delay submission to the OAL of its citation and fine regulations (new Article 8, Chapter 13.2, Title 16 of the CCR), which were adopted by the Committee on January 29. The OAL recently disapproved portions of the Board of Podiatric Medicine's citation and fine regulations (see *infra* agency report on BPM). Because PTEC's cite and fine regulations (and those of several other Department of Consumer Affairs agencies) are quite similar to BPM's, DCA legal counsel Greg Gorges has advised PTEC to wait until BPM's regulation are approved. Should changes to PTEC's adopted regulations be necessary, PTEC will reopen the public comment period or hold a hearing as appropriate, according to Executive Officer Don Wheeler.

#### LEGISLATION:

*SB 645 (Royce)* is opposed by PTEC. The measure would add additional technical support services to those functions authorized to be performed by medical assistants, and would require the Board of Medical Quality Assurance's Division of Allied Health Professions to adopt regulations which establish standards for these services. The bill is pending in the Assembly Ways and Means Committee at this writing.

*SB 2468 (Maddy)* would create a

new health facility licensing category entitled "hospice acute inpatient facility." The language in this bill was previously contained in SB 309 (Maddy), which was vetoed by the Governor. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 56 and Vol. 7, No. 3 (Summer 1987) p. 80 for background information.) PTEC supports this bill, which was passed by the Senate on May 26 and is currently pending in the Assembly Health Committee.

*SB 2565 (Keene)* concerns reports filed pursuant to section 805 of the Business and Professions Code, relating to peer reviews. The measure would clarify existing law regarding the immunity of hospitals, persons, or organizations from liability for peer review actions which are required to be reported to various state agencies. The bill would establish specific procedural guidelines for professional review actions and the reporting thereon in order for immunity to attach. SB 2565 passed the Senate on May 12 and is pending in the Assembly Health Committee.

#### LITIGATION:

*California Chapter of the American Physical Therapy Association, et al. v. Board of Chiropractic Examiners, et al.* is still pending in Sacramento Superior Court. The court has overruled the Board of Chiropractic Examiners' (BCE) demurrer, and has ordered BCE to answer the complaint, which challenges BCE's adoption of section 302 to define the scope of chiropractic practice. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 66 and Vol. 8, No. 1 (Winter 1988) p. 63 for background information.) PTEC and the Board of Medical Quality Assurance have intervened as plaintiffs.

#### RECENT MEETINGS:

At PTEC's March meeting, Committee member Norma Shanbour delivered an update on PTEC's oral examination revisions. Suggested answers to exam questions and a list of commonly-used terms to be entered into a glossary for the benefit of PTEC public members are being mailed to Committee members for their input. The glossary terms may result in a brochure, possibly entitled "Ten Things You Should Know About Physical Therapy."

Executive Office Don Wheeler reported that a PTEC newsletter may be published at the end of June. Committee member George Suey suggested that monies be set aside for automation of PTEC's newsletter capacity.

#### FUTURE MEETINGS:

October 6 in Monterey.  
December 8 in Sacramento.



# REGULATORY AGENCY ACTION

## 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.* At its March meeting, the PAEC discussed possible changes to section 1399.541(f), Chapter 13.8, Title 16 of the California Code of Regulations, regarding examples of medical tasks performable by PAs, to delete the word "routine" and to change the phrase "institutional setting" to "practice setting". The Committee also requested legal counsel to draft changes to section 1399.546 regarding documentation which must be maintained by PAs' supervising physicians. These and other technical changes were scheduled for further discussion at the Committee's June meeting.

*Delegation of Services Agreement.* The final draft of a sample Delegation of Services Agreement Between Supervising Physician and Physician Assistant was approved by the PAEC at its March meeting. (See CRLR Vol. 7, No. 4 (Fall

1987) p. 58 for background information.) The sample agreement will be included in the application packet for all new licensees and new supervising physicians. A copy will be included in the PAEC's newsletter, and current licensees may request extra copies.

### LEGISLATION:

*AB 249 (Margolin)*, regarding Medi-Cal eligibility for health care services provided outside a hospital or long-term care facility, is still pending in the Senate Appropriations Committee. (For background information, see CRLR Vol. 7, No. 4 (Fall 1987) p. 57.)

*AB 4510 (Waters)*, a PAEC-sponsored bill, would require the PAEC to create a diversion program for PAs and would amend section 3513 of the Business and Professions Code to authorize the PAEC to require that PAEC-approved training program offer full credit for prior health care education and experience. This bill has passed the Assembly and is pending in the Senate Business and Professions Committee at this writing.

*SB 645 (Royce)*, as amended on June 1, would give BMQA's Division of Allied Health Professions the authority to adopt regulations establishing standards for technical supportive services which may be performed by medical assistants. The PAEC opposes this bill, which is pending in the Assembly Ways and Means Committee.

### RECENT MEETINGS:

At its March meeting in Palm Springs, the PAEC discussed its application for a seat on the Board of Directors of the National Commission on Certification of Physician Assistants (NCCPA), the organization which administers the Physician Assistant National Certifying Examination. It was reported that 10% of the nation's PAs are licensed in the state of California. Without representation on the NCCPA, California is buying a product over which it has no input or control. Currently, no state boards are represented on the NCCPA.

In response to a letter on behalf of the PAEC to the NCCPA, NCCPA Executive President David Glazer outlined the guidelines for reviewing applications for Board membership. The two criteria used in considering applications are whether the applicant organization would provide representation of the physician assistant profession not currently provided to the Board of Directors; and whether the organization would provide essential increased breadth to the Commission.

Glazer was of the opinion that regulators are represented on NCCPA's Board by the Federation of State Medical Boards of the United States. Also, some current Directors are seated on state medical boards and/or physician assistant examining committees, although that is not their basis of representation on the NCCPA. PAEC must identify characteristics that would provide NCCPA with a unique expertise not currently available on the Board for its application to be considered, according to Glazer.

On a related matter, PAEC contacted the National Board of Medical Examiners (NBME) concerning various NCCPA test development activities. The NBME operates under a contract from NCCPA for test development. The PAEC was informed that because of this contract relationship, NBME is not authorized to release any information or permit attendance at meetings without express approval of the NCCPA. Thus, the NCCPA refused PAEC attendance at the NBME meetings.

### FUTURE MEETINGS:

August 26 in Monterey.

October 7 in Sacramento.

## BOARD OF PODIATRIC MEDICINE

*Executive Officer: Carol Sigmann*  
(916) 920-6347

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

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

### MAJOR PROJECTS:

*Regulatory Action.* On April 7, the Office of Administrative Law (OAL) disapproved the BPM's proposed sections 1399.698 and 1399.699 of Chapter 13.9, Title 16 of the California Code of Regulations. OAL's disapproval was based on a finding that the regulations failed to comply with the clarity and consistency standards established in Government Code section 11349.1.



Proposed section 1399.698 would authorize BPM's Executive Officer to issue citations to licensees and unlicensed persons, pursuant to authority granted under Business and Professions Code section 125.9. OAL found it unclear whether the Executive Officer has been vested with only the ministerial duty of issuing the citation, or whether the BPM is also authorizing the Executive Officer to determine when and against whom a citation will be issued. OAL suggested that persons directly affected by this regulation might not understand the extent of the authority granted to the Executive Officer therein. OAL also found section 1399.698(c), which establishes a range of fines to be assessed against licensees who violate the specified code sections, to be unclear as to what conduct is sufficient to warrant issuance of a citation.

Section 1399.699(a) of BPM's proposal would establish an informal conference procedure, requiring that the person who receives a citation and desires an informal conference must request the conference within ten days of service of the citation. OAL found this section to be unclear regarding how the ten-day period is calculated: if the citation is served by mail, it is unclear whether the ten days is calculated from the date the citation is mailed or the date the citation is received.

OAL also found section 1399.699(b) to be unclear concerning method of service and timing of notification as to the decision rendered by the Executive Officer following the conference.

The Board was scheduled to consider further amendments at its June 2 meeting in San Francisco.

#### LEGISLATION:

*SB 2238 (Montoya)* would add to the required qualifications for the public members of the BPM, by providing that no public member of the BPM shall be employed by or hold any official or familial relation to any corporation or person who is a licentiate of the Board or an officer or faculty member of any college, school, or other institution engaged in podiatric medical education. The bill would also authorize the Board to impose probation without a hearing in an uncontested disciplinary case if the licensee agrees by written stipulation to the terms of probation. Finally, the measure would authorize an accused to request a preliminary hearing before an administrative law judge (ALJ) and would require the hearing to be held within sixty days of the filing of an

accusation, and would authorize the Board to proceed only on cases which are found to have merit by the ALJ. SB 2238 passed the Senate on June 9.

*SB 2542 (Montoya)*, as amended April 19, would provide that consultants for the BPM shall not serve for more than 48 months, except as specified. SB 2542 passed the Senate on May 5 and is pending in the Assembly Health Committee.

*AB 4542 (Johnson, Zeltner)* would transfer the authority for issuing podiatrist fictitious-name permits from BMQA to the BPM. The bill would also revise and increase podiatric licensure fees and add new fees. This bill passed the Assembly on June 2 and is pending in the Senate Committee on Business and Professions.

*SB 2565 (Keene)* concerns reports filed pursuant to section 805 of the Business and Professions Code, relating to peer reviews. The measure would clarify existing law regarding immunity of hospitals, persons, or organizations for peer review actions which are required to be reported to various state agencies, including BPM. The bill would establish specific procedural guidelines for professional review actions and the reporting thereof in order for immunity to attach. SB 2565 passed the Senate on May 12 and is pending in the Assembly Health Committee.

*AB 4387 (Bronzan)* would increase the fine to not less than \$200 nor more than \$1200 for any physician, podiatrist, dentist, surgeon, chiropractor, or optometrist who is guilty of engaging in excessive prescribing or administering of drugs or treatment. This bill, which would take effect immediately as an urgency statute, is pending in the Assembly Health Committee.

*AB 2422 (Allen, Bradley)*, which concerns BPM enforcement of the Medical Practice Act and compliance with the Bagley-Keene Open Meetings Act, is still pending in the Senate Business and Professions Committee. (For background information, see CRLR Vol. 8, No. 2 (Spring 1988) p. 67.)

#### FUTURE MEETINGS:

To be announced.

## 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:

*Child Abuse Regulations Disapproved.* In April, the Office of Administrative Law (OAL) disapproved the PEC's adoption of sections 1387.7 and 1397.1, Title 16 of the California Code of Regulations. The regulations would have required psychologists to receive training in child abuse assessment and reporting, and would have specified that no exemptions from child abuse training requirements would be granted. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 65 and Vol. 7, No. 4 (Fall 1987) p. 59 for background information.) The OAL disapproved of PEC's regulations for two reasons: section 1387.7 was inconsistent with Business and Professions Code section 28, and the Committee failed to respond to all public comments as required by the Administrative Procedure Act.

Business and Professions Code section 28 provides that the PEC shall exempt any applicant "who applies for an exemption from the requirements of this section and who shows to the satisfaction of the committee...that there would be no need for the training in his or her practice because of the nature of that practice." According to OAL, section 28 conflicts with proposed section 1387.7, which prohibits any exemptions from child abuse training requirements. OAL stated that the PEC may not circumvent the express will of the legislature, which requires the Committee to review each request for exemption on an independent basis.

OAL's disapproval was also based upon the PEC's receipt of a December comment letter from a psychologist who questioned whether teaching an approved course in child abuse assessment provided an automatic exemption. OAL stated that this comment was a challenge to the preclusion of any exemption to the training requirements and was not





# REGULATORY AGENCY ACTION

addressed by the PEC.

The PEC plans to resubmit the proposed regulation to OAL, but has not decided whether to remove the exemption language from section 1387.7 or argue for its inclusion.

## LEGISLATION:

**AB 3768 (Chacon)**, as amended April 27, would expand the definition of "psychotherapist" used in section 1010 of the Evidence Code, which provides that confidential communications between a patient and a psychotherapist shall be privileged. AB 3768 would include, for those purposes, a person exempt from the Psychology Licensing Law, as specified, and a psychological intern. The measure passed the Assembly on May 5 and is pending in the Senate Judiciary Committee.

**AB 4182 (Moore)**, as amended in the Assembly on May 2, would augment existing licensure requirements for psychologists, clinical social workers, marriage, family and child counselors (MFCCs), and educational psychologists. The bill would require that, on or after January 1, 1989, any person applying for a license or renewal of license in those professions shall show evidence of completion of training in cross-cultural counseling or psychotherapy, or the cross-cultural delivery of other services within the scope of the person's practice. AB 4182 is pending in the Assembly Health Committee.

**SB 2107 (Rosenthal)**, as amended May 11, would provide that MFCCs and licensed clinical social workers may be the second signature to certify for involuntary confinement in a mental institution if they have been directly involved with the person to be certified and are on the staff of the facility providing the evaluation. The bill passed the Senate on June 9.

**SB 2693 (Torres)** would require Department of Corrections employees rendering mental health services to be licensed health practitioners. The bill passed the Senate on May 12 and is pending in the Assembly Committee on Public Safety.

The following is a status update on bills discussed in CRLR Vol. 8, No. 2 (Spring 1988) at page 68:

**AB 3322 (Duplissea)** would authorize the PEC to raise its exam fee to \$175 after October 1, 1989. At this writing, the bill is pending in the Senate Business and Professions Committee.

**AB 2872 (Jones)**, as amended May 19, would permit a local mental health

program to grant an extension of a waiver of licensure for an additional year for a person employed full time as a psychologist, based on extenuating circumstances, and for a period of time proportional to the extent of employment for a part-time psychologist. This measure is pending in the Senate Appropriations Committee.

**AB 4106 (Filante)** would authorize the issuance of a fictitious name permit by the PEC, prohibit a psychologist from practicing under a fictitious name without a permit, and specify the fee for the permit. The bill has passed the Assembly and is pending in the Senate Business and Professions Committee.

## LITIGATION:

In *California Association of Psychology Providers et al. v. Rank*, 88 D.A.R. 7027, No. B020113 (Second District Court of Appeal, June 2, 1988), plaintiff organization challenged several Department of Health Services (DHS) regulations which require a psychiatrist to be responsible for patient diagnosis and treatment at health facilities such as acute psychiatric hospitals. Plaintiff alleged that the regulations (sections 70577(d)(1) and 71203(a)(1)(A), Title 22, California Code of Regulations) were inconsistent with section 1316.5 of the Health and Safety Code, a nondiscrimination provision which provides that "if a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physicians...and clinical psychologists are authorized by law to perform, such service may be performed by either, without discrimination."

The trial court ruled in favor of plaintiff, and ordered DHS to amend its regulations to allow clinical psychologists, "within the scope of their licensure," to diagnose patients and develop treatment plans. On appeal, the Second District reversed the lower court's ruling after exploring the proper interpretation of the phrase "which [service] both...are authorized by law to perform" contained in section 1316.5.

The appellate court cited section 2038 of the Business and Professions Code, which provides that physicians may diagnose patients "by any method, device, or procedure whatsoever...to ascertain or establish whether a person is suffering from any physical or mental disorder," and found that "[o]nly a physician is authorized to render a diagnosis concerning a mental disorder organic in origin or nature." The court

held that the term "diagnosis" as applied to psychologists means "any undertaking to ascertain or establish whether a person is suffering from a mental disorder discoverable by any method or procedure consistent with a psychologist's licensure."

With regard to treatment, the court noted limitations on psychologists contained in Business and Professions Code section 2904, which states that "the practice of psychology shall not include prescribing drugs, performing surgery or administering electro-convulsive therapy." To the extent that a mental disorder is susceptible to such treatment, the court found that "only a physician is authorized to create and implement a treatment plan therefor."

In sum, the court held that health facilities must allow their clinical psychologists "the right to diagnose and treat their patients without interference or hindrance from a physician only in those instances where a physician has initially ruled out a medical basis for the patient's medical disorder and determined that it is not subject to medical treatment, and where the patient's mental disorder does not subsequently become susceptible to medical treatment after admission to the health facility."

## FUTURE MEETINGS:

September 23-24 in San Francisco.

November 4-5 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.* At its July 8 meeting in San Diego, the SPAEC was scheduled



to hold a public hearing on several proposed changes to its regulations, which appear in Chapter 13.4, Title 16 of the California Code of Regulations. The regulation changes are proposed pursuant to the Committee's authorization to set standards for the registration and training of speech pathology and audiology aides ("aides").

Section 1399.170 would be amended to specify that the registration of aides must be approved by the Committee in order for an aide to perform services. The term "industrial audiology aide" would be defined to mean an audiology aide who conducts specified audiograms for testing industrial hearing. Section 1399.171 would be amended to include specific requirements for supervisors' training plans with regard to the training and supervision of aides.

Section 1399.172 would be amended to impose legal responsibility on supervisors for the acts and services provided by aides. Additionally, the proposed changes would require supervisors of industrial audiology aides to include a proposed plan of alternate supervision with the application form. The proposal would also define the services which may be performed by aides, which do not exceed their level of competency.

New section 1399.174 would be adopted to provide that an aide shall complete a training program established by the supervisor which instructs the aide in the skills necessary to perform any speech pathology or audiology services and to require a demonstration of the aide's competency. Finally, section 1399.176 would be amended to specify that failure to comply with the Committee's regulations may result in disciplinary action.

#### LEGISLATION:

*SB 645 (Royce)*, which would expand the authority of the Board of Medical Quality Assurance's Division of Allied Health Professions in the regulation of medical assistants, is pending in the Assembly Ways and Means Committee at this writing. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 68-69 for more information.)

#### RECENT MEETINGS:

On May 13 in Los Angeles, the Committee reviewed a new SPAEC mission statement with specific goals and objectives. In an effort to achieve the SPAEC's primary mission of consumer protection, the Committee adopted the following goals: (1) to ensure consumer protection, education, and fair competi-

tion among professionals by continuous review and improvement of licensing, educational, and enforcement services; (2) to improve communications and cooperation with all internal and external sources, licensees, future licensees, consumers, and others involved in the provision of health care; and (3) to improve office procedures in processing applicant, licensee, and consumer requests.

#### FUTURE MEETINGS:

September 9 in San Francisco.  
November 4 in Monterey.

### 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.

BENHA's budget increased \$15,000 over last year's allocation. The 1987-88 budget is \$315,000.

#### MAJOR PROJECTS:

*Implementation of AB 1834.* BENHA continues to work toward compliance with the requirements of AB 1834 (Connelly). (For details on AB 1834, see CRLR Vol. 8, No. 2 (Spring 1988) p. 69; and Vol. 8, No. 1 (Winter 1988) pp. 66-67.) BENHA hired a half-time Disciplinary Action Coordinator who began work on March 2. The new position will assist in handling the development of disciplinary cases. In addition, BENHA has obtained a word processor to compile and track statistics and events related to its licensees. The entire computer system was scheduled to be operational by early June.

At its April 18 meeting in Oakland, the Board reviewed draft policies and procedures for implementation of AB 1834, which were developed by BENHA's Executive Officer Ray Nikkel and a committee composed of representatives detailed in AB 1834. The document specifies BENHA's enforcement goals and sets forth procedures for achievement of those goals at various intervals in the disciplinary process. The Board was scheduled to examine the policies and procedures in detail at its June meeting.

#### LEGISLATION:

*AB 3687 (Bates).* Existing law requires licensees operating community care facilities, residential care facilities for the elderly, and child day care centers to terminate, remove, or bar from entering the facility any person who has been convicted of certain crimes, unless the Director of Social Services grants an exemption. As amended June 2, this bill would require the barring from any of these facilities of any person convicted of the infliction of pain or mental suffering on, or endangering the health of, elderly or dependent adults. This bill would further require, with respect to residential care facilities for the elderly, the barring of any person convicted of sexual battery. AB 3687 is pending in the Senate Health and Human Services Committee.

*AB 3652 (Friedman)*, as amended June 16, would require that any resident of a nursing home shall receive written notice of the intention of the facility to terminate the tenancy and the basis for the action, and would accord the resident an opportunity for a fair hearing upon the filing of a request with the Department of Social Services (DSS). This bill would require the DSS to establish these procedures in Los Angeles, San Francisco, and Fresno counties, and report