contract to the Board. The guidelines would include goals for appropriate content, development, grading, and administration of an examination, against which the vendor's rules and procedures may be judged, and procedures through which BLA may reasonably ensure that the vendor meets the Board's goals. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

Board's Legislative Proposal Rejected. DCA disapproved the Board's request for legislation to amend section 5651 of the Business and Professions Code, to allow BLA to accept CLARB-certified individuals to become licensed in California.

RECENT MEETINGS:

At its January 25 meeting, the Board introduced its two new members: Dan Johnson, a landscape architect from Sacramento, and Greg Burgener, a landscape contractor from Pismo Beach who is a new BLA public member. Although Mr. Burgener has considerable connections with the landscaping industry, BLA contends that he meets the definition of a public member under section 450 *et seq.* of the Business and Professions Code. Also on January 25, George Gribkoff was elected to serve another term as Board President, and Larry Chimbole was selected as Vice President.

On March 1, Executive Officer Jeanne Brode outlined BLA's present budget. The Board is currently overextended in the following areas: temporary help, examiners (graders), staff benefits, general expenses, travel in and out of state, exam contract, exam supplies, printing, and communications. The Board approved Ms. Brode's request to prepare a budget change proposal.

At its March 1 meeting, the Board also heard from Pam Ledbetter, whose application to take the licensing exam had been denied. Ms. Ledbetter's actual work experience appeared from her application to have been unsupervised. Thus, she appeared to lack the requirement of work experience supervised by a licensed professional in one of several enumerated fields. The misunderstanding was cleared up when Ms. Ledbetter approached BLA and explained that all of her work was performed under a licensed professional engineer, which she failed to mention in her application. BLA then stated that should this situation arise in the future, Executive Officer Brode may approve the application with the review and concurrence of two Board members. Board staff stated that the language of new regulatory section 2620 should prevent this situation from recurring.

FUTURE MEETINGS:

August 2 in Irvine (tentative).

MEDICAL BOARD OF CALIFORNIA

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

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

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

The functions of the individual divisions are as follows:

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

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

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

DAHP members are assigned as liaisons to one or two of these boards or committees, and may also be assigned as liaisons to a board regulating a related area such as pharmacy, optometry, or nursing. As liaisons, DAHP members are expected to attend two or three meetings of their assigned board or committee each year, and to keep the Division informed of activities or issues which may affect the professions under the Medical Board's jurisdiction.

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

MAJOR PROJECTS:

MBC Still Hoping to Leave DCA. At its February 8 meeting, MBC discussed the response from Governor Wilson's transition team to the Board's request to leave the Department of Consumer Affairs (DCA), to become either an autonomous agency or a department within the Health and Welfare Agency. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 68; Vol. 10, No. 4 (Fall 1990) pp. 81-82; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 98 for background information on the Board's dissatisfaction with and desire to leave DCA.) Despite the transition team's appraisal that "before moving forward with a transfer, it would appear prudent to await the new appointments to the State and Consumer Services Agency to see if the issues of primary concern to the Board can be resolved," MBC members Dr. J. Alfred Rider and Dr. Eugene Ellis stated their belief that the transition team's response was "not definitive," and urged the Board to continue to "actively pursue" leaving DCA. However, public member Ray Mallel strongly disagreed, and recommended that the

Board wait for the new appointments to be made as advised by the Governor's transition team. Board member Dr. Madison Richardson agreed with Mallel, but recommended "solidifying the Board's concern" by sending a second letter to the transition team to reaffirm the Board's desire to ultimately pursue the proposal. The majority of the Board found this to be an acceptable compromise, and agreed to send such a letter.

Executive Director Ken Wagstaff reminded the Board that, in addition to the uncertainty created by the new appointees, consolidation of the functions of the 39 boards and commissions under DCA is being considered, as mentioned in the transition team's response, and that any consolidation proposal will certainly be a factor in MBC's attempt to leave the Department..

In general, MBC's staff continues its wait-and-see policy regarding the Board's proposed move and, upon questioning by the Center for Public Interest Law (CPIL), acknowledged being somewhat reluctant to pursue the proposal. Although staff supported the initial idea to evaluate the position of the Board in state government, staff members told CPIL that they believe the Board is moving too fast, and does not fully appreciate the logistics involved in leaving DCA.

Revival of CMA's Medical Practice Opinion Program. The Board is again discussing the possibility of playing a key role in the revival of the California Medical Association's (CMA) Medical Practice Opinion Program (MPOP). MPOP was created in the early 1970s to provide CMA members, other medical organizations, and members of the public with scientific opinion on questions of medical practice in California. However, CMA's legal counsel suspended the program in April 1989 due to the risk of antitrust liability. Specifically, third-party payors were sometimes using the MPOs as a basis for refusing to pay physicians for services which were not advised therein. Consequently, some of these physicians unsuccessfully sued CMA for antitrust violations on the basis that the MPOs created unreasonable professional standards, or that they were based on decisions made following unfair or negligent procedures. MPOP was maintained only to the extent that CMA was protected from liability by the *Noerr-Pennington* doctrine, in responding to requests for opinions from the state or federal governments. *See Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); and *United Mine Workers v. Pennington*, 381 U.S. 657 (1965).

Until its deactivation, the program typically reviewed (upon request) emerging, new, and, to a lesser extent, established medical and surgical practices, procedures, and devices for their safety, effectiveness, limitations on use, and general level of acceptance in the medical community. The opinions were prepared and reviewed annually by 24 CMA scientific advisory panels, based on the panels' training, experience, and review of the current literature regarding diagnosis, treatment, and procedures. The opinions were informational only and were not intended to be interpreted as directives, instructions, or policy statements. Furthermore, they dealt only with general medical procedures, not with care rendered in specific cases.

In an effort to avoid the liability risk and revive the program, a CMA representative attending MBC's February 1990 meeting proposed that the Board assist CMA in reactivating the program by publishing the MPOs in MBC's *Action Report*, thereby (theoretically) shrouding the program under the protective veil of the "state action" exemption from antitrust liability. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 99 for background information.) This proposal was ultimately rejected, however, since mere publication of the MPOs in *Action Report* would fall far short of the state action doctrine requirements that any private conduct, in order to be exempt from antitrust scrutiny, be "clearly articulated" in state law, and "actively supervised" by the state.

However, at MBC's February 1991 meeting, CMA introduced draft legislation which is intended to accomplish the following: (1) clearly enunciate a legislative intent to support MPOP, and thereby satisfy the state action doctrine requirement that the activity be affirmatively expressed as state policy; (2) create a twelve-member Committee of Medical Technology within the Board's Division of Medical Quality, comprised of both physicians and non-physicians; (3) establish a process whereby the Committee would determine whether an MPO rendered by a professional association was made for good cause; (4) authorize the Committee to adopt, pursuant to the Administrative Procedure Act (APA), rules and regulations necessary to carry out the legislation; (5) establish the Committee's procedures for the filing of protests to adopted MPOs, scheduling and conducting hearings, and issuing decisions; and (6) outline the procedure for and limitations on judicial review of the Committee's decisions.

As outlined above, CMA contends the proposed legislation would satisfy both prongs of the state action doctrine. Even if it does, however, the process of adopting and approving the MPOs is arguably rulemaking under the APA. The MPO adoption process set forth in the proposed legislation is somewhat similar to the notice and comment procedure of the APA rulemaking process; but there is no provision in the proposed procedure for review by the Office of Administrative Law (OAL). Thus, the proposed procedure may be invalid as "underground rulemaking."

Board members expressed their desire to review the proposal, and the matter was slated for further discussion at the Board's May 10 meeting in Sacramento.

Discipline System Reform. At its February meeting, DMQ discussed the implementation of SB 2375 (Presley) (Chapter 1597, Statutes of 1990), which overhauls several aspects of MBC's physician discipline system. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 66-67; Vol. 10, No. 4 (Fall 1990) pp. 79-80 and 84; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 21 and 74-75 for background information on SB 2375.) Among other things, the bill creates a special unit within the Attorney General's Office which specializes in prosecuting physician discipline cases. The unit, known as the Health Quality Enforcement Section (HQES), will be headed up by Alvin J. Korobkin, a senior assistant attorney general from the AG's San Diego office. Korobkin will supervise 22 deputy attorneys general (DAG) who work out of AG's offices in Los Angeles, San Francisco, Sacramento, and San Diego. The goal of HQES is to file accusations against physicians within sixty days of a completed investigation. If this goal cannot be met, HQES will request that additional DAGs be assigned to the unit. HQES DAGs also plan to visit each regional office of the Medical Board at least once per month to advise staff on ongoing investigations.

At their February meetings, DMQ, DOL, and the full Board discussed the funding necessary to finance the overhauled discipline system. Presently, the Medical Board's licensing fee is $360 every two years; this revenue funds the Board's activities. Under existing law, the Board may charge each physician up to $400 every two years. If the rate is increased to the maximum, an additional $2 million will be raised over a two-year period. However, MBC predicts that the cost of SB 2375 will be approximately $2.4 million per year. Board members discussed two options during the February meetings:

-Option one would increase fees from $360 to $400, effective July 1, 1991; and from $400 to $530, effective July 1, 1992.

-Option two would increase fees from $360 to $400, effective July 1, 1991; and from $400 to $500, effective July 1, 1992.

Board members decided that option two would be sufficient to meet the financial demands of SB 2375, and directed staff to commence a rulemaking proceeding to amend section 1351.5, Division 13, Title 16 of the CCR, to raise licensing fees to their statutory maximum. However, the Board must also seek a legislative change, because existing statute limits the Board to a maximum of $400 every two years. Assemblymember Filante subsequently introduced just such a bill (*see infra* LEGISLATION).

At its February meeting, DMQ rejected public member Frank Albino's suggestion that, if DMQ wishes to keep its biennial renewal fee below $500, it adopt a cost recovery program wherein DMQ's investigation costs and cost of oral/clinical exams would be passed on to physicians who are ultimately disciplined. However, DMQ left open the option, for future discussion, of imposing small fines for minor infractions.

Also in February, DMQ again discussed its continuing need to establish a new classification system and higher salary scale for its investigator positions, to facilitate retention of trained investigators. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 67 for background information.) At this writing, the State Personnel Board has still not approved a proposed three-tiered investigator classification system (which includes proposed pay increases for all levels) proposed by DMQ in July 1990. DMQ Enforcement Chief Vern Leeper again stressed his concern that if the plan is not approved soon, many of DMQ's investigators will leave to work for other agencies with higher investigative classifications. If this departure occurs, DMQ's complaint backlog could rise to high levels very quickly. In a related matter, DMQ officially made permanent eight limited-term investigator positions which were scheduled to expire on June 30, 1991.

DMQ's Discipline Case Backlog. At its February meeting, DMQ members discussed a January 16 report to the legislative budget committees by Ken Wagstaff. In the report, Wagstaff stated that DMQ has complied with language in the 1990 Budget Act and AB 3272 (Filante) (Chapter 1629, Statutes of 1990), which required it to eliminate its backlog of unassigned cases awaiting investigation by December 31, 1990. According to the report, "by January 2, 1991, the only unassigned cases were those in transit between our central Sacramento complaint intake unit and assignment to an investigator in one of our regional offices. The cases in transit represent less than five percent of our total cases under investigation."

Although Wagstaff's report states that DMQ accomplished the elimination of the backlog by filling all available investigator positions and creating a Central Complaints and Investigations Control Unit, DMQ members again expressed concern that the numbers have simply been moved from one column ("cases awaiting assignment to an investigator") to another ("cases awaiting investigation"). (See CRLR Vol. 11, No. 1 (Winter 1991) p. 67 for background information.) Vern Leeper assured the Division that most cases are in fact under investigation because many of the new investigators are former police investigators who needed only minimal training before undertaking a full caseload.

Because DMQ appears to have eliminated its complaint backlog, Assemblymember Filante has introduced AB 196, which restores full funding to the Medical Board for fiscal year 1990- 91 (*see infra* LEGISLATION). The legislature withheld one-quarter of the Board's budget last year, in an effort to encourage the Division to eliminate its backlog of 900 unassigned cases.

DMQ's Diversion Program. At its February meeting, DMQ members and staff continued their discussion of the scope and procedures of the Diversion Program for physicians impaired due to alcohol/drug abuse or physical/mental illness. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 67-68 and Vol. 10, No. 4 (Fall 1990) p. 81 for background information.) As recommended by the California Medical Association (CMA), DMQ adopted the following conditions under which the Diversion Program should refer to the Enforcement Program physicians who have "unsuccessfully terminated" their participation in the Diversion Program:

(1) The diversion files of Board-referred physicians who unsuccessfully terminate will be referred to enforcement (regardless of the reason for the termination) for evaluation, the reopening of a prior case, or the initiation of a new disciplinary action.

(2) The diversion files of self-referred physicians who unsuccessfully terminate will be referred to enforcement if the Diversion Evaluation Committee regards the participant as a danger to themselves or the practice of medicine.

(3) The files of physicians who have been disciplined and are participating in the Diversion Program as part of DMQ-ordered probation will be immediately referred to enforcement if the physician commits an act which is a violation of probationary terms and conditions.

Satisfaction of Continuing Medical Education Requirements. After discussion at its February meeting, DOL killed a motion made by Dr. J. Alfred Rider to increase the allowable number of continuing medical education (CME) hours which may be satisfied by teaching from eight to twelve hours per renewal period. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 69-70 for background information.)

CMA strongly opposed the proposed change, arguing that it is impossible to distinguish between "good" and "canned" lecturing. In other words, it would be too difficult to determine whether a physician is preparing and teaching new, innovative material, or repeatedly lecturing on the same material with virtually no new learning experience. In addition, CMA stated it would be better to err on the side of encouraging physicians to comply with the spirit behind the CME requirement, rather than watering down already minimal requirements.

Unable to respond to CMA's objections and provide reasons for the regulatory change, DOL carried a motion made by public member Ray Mallel to reject the proposal.

Postgraduate Training Requirement. In February 1990, Assemblymember Filante introduced a bill requiring DOL to make recommendations on whether to increase the postgraduate training (PGT) necessary for licensure beyond the current one-year requirement. At its June 1990 meeting, DOL recommended adoption of a two-year requirement rather than the initially proposed three years. AB 3272 (Filante) was eventually passed and chaptered (Chapter 1629, Statutes of 1990), specifically requesting a full study of the various alternative ways to implement an increased PGT requirement, and requiring DOL to submit a report to the legislature on or before January 1, 1992. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 82-83; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 99-100; and Vol. 10, No. 1 (Winter 1990) pp. 75-76 for extensive background information.)

DOL must now decide whether to continue pursuing legislation that would increase the current one-year PGT requirement for medical licensure. At the January 16 meeting of the Board's Executive Committee and at DOL's February meeting, members discussed

alternatives to legislation and other issues which have arisen from the PGT proposal.

One option presented in lieu of pursuing legislation to increase PGT is to rephrase the language on the Certificate of Completion of Approved Postgraduate Training form. Currently, the form is signed by the Director of Medical Education at the residency institution and certifies the applicant's completion of "satisfactory" postgraduate training. At the January Executive Committee meeting, it was suggested that the one-year period be retained but that the word "satisfactory" be changed to "successful," inferring that the applicant's performance in the training program was above average.

However, Business and Professions Code section 2096 requires only that an applicant "satisfactorily" complete one year of PGT. Use of another standard on the form would be inconsistent with the statute. Thus, at the February meeting, DOL members discussed whether to formally define the word "satisfactory," so officials who review and certify PGT will have a clear understanding as to the medical skills necessary to have a full and unrestricted license to practice medicine.

An additional concern is the responsibility of the Director of Medical Education who signs the PGT certification form. DOL staff reported that directors of residency programs are increasingly signing the form certifying that the applicant has "satisfactorily" completed one year of PGT, and at the same time attaching either a letter or addendum stating that the applicant did not satisfactorily complete the training for various reasons. Apparently, residency directors do not understand that they are certifying that the year of training has provided the applicant with the medical skills required to obtain an unrestricted license to practice medicine. Once again, it appears necessary for DOL members to define the director's responsibility in representing to the Board that the certified applicant clearly possesses the required medical skills.

After discussion, DOL requested staff to propose possible guidelines addressing the above-stated issues for its May meeting. A formal vote will be held at the September meeting.

DOL Rulemaking. The rulemaking file on DOL's amendments to section 1324, Division 13, Title 16 of the CCR, is being prepared for final submittal to OAL. Adopted at DOL's November 1990 meeting, these amendments would revise the standards for DOL-approved clinical training programs for foreign medical graduates (FMGs). The amendments proved controversial because CMA and every medical school in California argued for abolition of the programs. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 69; Vol. 10, No. 4 (Fall 1990) p. 83; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 100 for detailed background information.)

On December 27, OAL rejected for a second time DOL's amendments to regulatory section 1328, which would specify that DOL's "written examination" requirement for FMGs may be satisfied by either (1) Components I and II of the Federal Licensing Examination (FLEX), or (2) Parts I and II of the National Board exam, plus Component II of the FLEX. The Division's legal counsel responded to the issues raised, and resubmitted the regulations to OAL for a third time. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 70; Vol. 10, No. 4 (Fall 1990) pp. 83-84; and Vol. 9, No. 4 (Fall 1989) p. 63 for background information.)

At this writing, DOL is still awaiting OAL's decision on its amendments to section 1351, which would increase fees for the FLEX and SPEX examinations. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 70 and Vol. 10, No. 4 (Fall 1990) p. 83 for background information.)

DAHP Regulatory Action. At its February meeting, DAHP announced that it would hold a formal public hearing for comment on its proposed medical assistant (MA) regulations at its May 10 meeting in Sacramento. The new regulations, which define the technical supportive services which may be performed by MAs, are now on their second circuit through the system, having been rejected by both OAL and DCA the first time around. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 69; Vol. 10, No. 4 (Fall 1990) p. 82; and Vol. 10, No. 1 (Winter 1990) pp. 76-77 for extensive background information.) The Division anticipates implementation of the regulations by September.

LEGISLATION:

SB 1119 (Presley). Existing law provides that MBC may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of a physician. Existing law requires the district attorney, city attorney, or other prosecuting agency to notify MBC of any filings against a licensee charging a felony, and the clerk of the court in which the licensee is convicted of a crime is required to transmit a copy of the record of conviction to the Board. As introduced March 8, this bill would require this notification and transmittal duties to be limited to those felony charges and criminal convictions that would be grounds for suspension of the licensee pursuant to the above-described provision. This bill is pending in the Senate Business and Professions Committee.

AB 14 (Margolin), introduced December 3, would enact the Health Insurance Act of 1991 for the purpose of ensuring basic health care coverage for all persons in California, and would require all employers to provide basic health care benefits, or to pay a premium for the provision of those benefits through the health coverage system established by this bill. AB 14 would also require additional license and renewal fees of up to $100 for physicians, $50 for chiropractors, $50 for osteopaths, $100 for podiatrists, and $50 for registered nurses, to be used to support specified health care data collection activities. At its February meeting, MBC voted to oppose this bill over the objection of public member Frank Albino. Albino had argued that MBC's purpose is to protect the consumer and not the profession, and the Board thus had no business even making a motion to oppose. AB 14 is pending in the Assembly Insurance Committee.

AB 190 (Bronzan), as amended March 14, would require a physician to inform a patient by means of a specified standardized written summary of the advantages, disadvantages, risks, and possible side effects of, and whether the federal government has approved devices used in cosmetic, plastic, reconstructive, or similar surgery, before the physician performs the surgery. This bill would require MBC to publish the standardized written summary prepared by the Department of Health Services (DHS), and to distribute copies of the summary, upon request, to physicians; MBC would be required to make the summary available for a fee not exceeding, in the aggregate, the actual costs to DHS and MBC for developing, updating, publishing, and distributing the summary. This bill is pending in the Assembly Ways and Means Committee.

AB 196 (Filante), as introduced January 7, would amend the Budget Act of 1990 to increase funding for the support of MBC from $14,253,000 to $19,004,000 during fiscal year 1990-91. This urgency bill passed the Assembly on March 4 and is pending in the Senate Budget and Fiscal Review Committee.

AB 465 (Floyd). Existing law provides general civil immunity to persons, including peer review committees, professional societies, and health facilities,

that provide information to MBC or the Department of Justice indicating that a licensee may be guilty of unprofessional conduct or impaired because of drug or alcohol abuse or mental illness. Existing law also sets forth special immunity provisions relating to the activities of certain health care professional peer review committees, professional societies, health facility professional staff committees, and specified professional members of underwriting committees of an interindemnity or reciprocal or interinsurance exchange or mutual company; these special provisions afford immunity to a member only if he/she acts without malice, has made a reasonable effort to obtain the facts, and acts in a reasonable belief that the action taken by him/her is warranted by the facts. As introduced February 8, this bill would make the above-described general immunity provisions of existing law inapplicable to activities subject to the existing law prescribing the above-described special immunity. This bill is pending in the Assembly Judiciary Committee.

AB 112 (Kelley), as introduced December 4, and *AB 117 (Epple)*, as introduced December 5, would exempt a physician from liability for any negligent injury or death caused by an act or omission of the physician in rendering medical assistance, when the physician in good faith and without compensation or consideration renders voluntary medical assistance at a clinic or long-term health care facility. Both bills are pending in the Assembly Judiciary Committee.

AB 1496 (Murray), as introduced March 7, would except from the physician-patient privilege confidential communications between a deceased subject of an inquest or inquiry and his/her physician when sought by a coroner for the purpose of inquiry into, and determination of, the circumstances, manner, and cause of violent, sudden, unusual, or other specified causes and circumstances of death or when sought by a coroner for the sole purpose of being introduced as evidence at a coroner's inquest proceeding. It would also prohibit the coroner from distributing or making available to any other person or entity these confidential communications, except as used in evidence at an inquest. This bill is pending in the Assembly Public Safety Committee.

AB 566 (Hunter), as introduced February 15, would prohibit any person from practicing or offering to practice perfusion for compensation received or expected to be received, or from holding himself/herself out as a perfusionist, unless at the time of doing so the person holds a valid, unexpired, unrevoked perfusionist license. This bill is pending in the Assembly Health Committee.

AB 569 (Hunter). Existing law restricts or prohibits certain forms of advertising by various persons licensed pursuant to the healing arts division of the Business and Professions Code. Amendments to these provisions contained in SB 2036 (McCorquodale) (Chapter 1660, Statutes of 1990) are not operative until January 1, 1993, except that certain agencies or organizations are permitted to take action contemplated by those amendments relating to the establishment or approval of specialist requirements on or after January 1, 1991. As introduced February 15, this bill would expressly include MBC within this authorization, and would permit the Board to adopt any regulations necessary for the administration of those amendments on or after January 1, 1992. This bill is pending in the Assembly Health Committee.

AB 704 (Speier). Existing law authorizes DMQ to take action against all persons guilty of violating the Medical Practice Act, requires DMQ to enforce specified provisions as to physician certificate holders, and grants the Division the power to investigate various acts of a physician. As introduced February 25, this bill would require the review to be accomplished by peers, if DMQ undertakes a review of a physician's practice during any investigation pursuant to the provisions of law authorizing disciplinary action against a physician. This bill is pending in the Assembly Health Committee.

AB 1183 (Speier), as introduced March 6, would require MBC to develop a California Indigent Obstetric Care Indemnification Program, requiring the program to provide prescribed state indemnification for malpractice claims against a physician who provides obstetric or gynecological care to patients at least 10% of whom are enrolled in Medi-Cal or other indigent care programs, and who has at least $100,000 in malpractice coverage. This bill is pending in the Assembly Judiciary Committee.

AB 1553 (Filante), as introduced March 7, would require MBC's initial license fee and biennial renewal fee to be fixed at an amount not to exceed $500. This bill is pending in the Assembly Health Committee.

AB 2222 (Roybal-Allard), as introduced March 12, would provide that the reviewing of X-rays for the purpose of identifying breast cancer or related medical disorders without being certified as a radiologist qualified to identify breast cancer or related medical disorders by a member board or association of the American Board of Medical Specialties, or a board or association with equivalent requirements approved by MBC, constitutes unprofessional conduct. This bill is pending in the Assembly Health Committee.

SB 1190 (Killea), as introduced March 8, would enact the Licensed Midwifery Practice Act of 1991, establishing within DAHP a five-member Licensed Midwifery Examining Committee, which would be required to adopt reasonable rules and regulations to carry out the Act. This bill would provide that physician liability for the referral or the transport of a patient by a licensed midwife shall not begin until the patient is in the physician's physical care, and that a physician who consults with a licensed midwife shall not be held liable for medications administered by a licensed midwife on a physician's standing orders, or for any other decision, action, or omission of the licensed midwife. This bill is pending in the Senate Business and Professions Committee.

AB 819 (Speier). Existing law provides that, except as otherwise specified, the offer, delivery, receipt, or acceptance by prescribed licensed health professionals of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person is unlawful, punishable as a misdemeanor or felony. Existing law also provides that it is not unlawful for a person to refer a person to a laboratory, pharmacy, clinic, or health care facility solely because the licensee has a proprietary interest or coownership in the facility.

As introduced February 27, this bill would, effective July 1, 1992, delete the exception for proprietary or coownership interests, and instead provide that it is unlawful for these licensed health professionals to refer a person to any laboratory, pharmacy, clinic, or health care facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest; the bill would also provide that disclosure of the ownership or proprietary interest would not exempt the licensee from the prohibition. However, the bill would permit specified licensed health professionals to refer a person to a laboratory, pharmacy, clinic, or health care facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest if the person referred is the licensee's patient of record, there is no alternative provider or facility available, and to delay or forego the needed health care would pose an

immediate health risk to the patient. This bill is pending in the Assembly Health Committee.

LITIGATION:

On March 21, the Medical Board filed a notice of appeal of San Francisco Superior Court Judge Stuart Pollak's award of over $76,000 in attorneys' fees to the Center for Public Interest Law (CPIL) for its successful representation of 32 Vietnamese physicians in *Le Bup Thi Dao v. Board of Medical Quality Assurance*, a civil rights action against DOL for its refusal to license 32 Vietnamese physicians without hearing or explanation for a two-year period. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 70; Vol. 10, No. 4 (Fall 1990) p. 86; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 102-03 for background information on this case.) In so doing, the Board rejected CPIL's formal offer to settle the matter for $70,000 and the Center's offer to waive "fees on fees," to which CPIL is presently entitled (that is, a party who prevails on an attorneys' fees motion is also entitled to collect fees for the hours expended on preparing and defending the fee motion). In light of the Board's rejection of its settlement offer, the Center is preparing its motion for an award of the costs of fee collection in the amount of $20,000.

In *Estate of Urbaniak v. Newton*, 226 Cal. App. 3d 1128 (Jan. 14, 1991), the First District Court of Appeal held that a patient's right of privacy is violated by a physician's disclosure of AIDS information which the patient reasonably believed would be kept confidential.

Gary Urbaniak sustained a disabling head injury and filed a claim against his former employer for workers' compensation benefits. The employer's insurance carrier, Allianz Insurance Co., requested a medical examination. In the process of the neurological examination, some of the electrodes attached to Urbaniak's body drew blood. Urbaniak had previously tested positive for the HIV virus, and informed the medical technician of the need to sterilize the instruments so his blood would not infect another person. Urbaniak insisted he never disclosed this information to the doctor, yet Dr. Frederic H. Newton disclosed in his report to the insurance company that Urbaniak suffered from AIDS and opined that the stress caused by his condition might be contributing to his muscle tension. The report was also sent to attorneys for the insurer and the Workers' Compensation Appeals Board.

Urbaniak filed suit in San Francisco Superior Court against Newton, Newton's medical corporation, and others, seeking damages for dissemination of a medical report which disclosed that he had tested positive for HIV virus. The complaint alleged violation of Urbaniak's right to privacy guaranteed in article 1, section 1, of the California Constitution, violation of Health and Safety Code section 199.21, intentional infliction of emotional distress, and negligent infliction of emotional distress. The superior court dismissed the suit on defendant's motion for summary judgment.

While the appeal was pending, Urbaniak died; his estate was substituted as the plaintiff. Although the court of appeal upheld the dismissal of the other causes of action, it reinstated the invasion of privacy claim against the attending physician, finding that article 1, section 1 of the California Constitution guarantees the right of privacy to all citizens and extends to freedom from disclosure of HIV positive status under certain circumstances.

RECENT MEETINGS:

At its February meeting, MBC reported on its continuing efforts to revive the Physician Loan Incentive Program, which ran for eight years but was terminated two years ago for apparent inefficacy. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 71; Vol. 10, No. 4 (Fall 1990) p. 86; Vol. 10, No. 1 (Winter 1990) p. 77 for background information.) Dr. Madison Richardson, chair of the Special Committee on Physician Loans for Underserved Areas, reported that the special conference which had been planned for February was cancelled due to the lack of a mandate for the program under which MBC could appropriate money for speakers' fees, hotel rooms, and any other expenses which would be incurred in assembling representatives from the various federal, state, and local agencies and organizations MBC had invited to participate. However, Dr. Richardson still hopes to hold the meeting, possibly by persuading interested parties to finance their own travel and lodging, and by scheduling the meeting in MBC's offices or in another public building at no cost. Thus, the present focus remains on bringing together different groups which share an interest in encouraging physicians to practice in underserved areas, in order to determine how MBC's limited funding might be most effectively spent as a supplement to an existing program sponsored by one or more of such groups.

Also at its February meeting, MBC announced that it had hired a public relations officer in an attempt to improve the image of the Board with the public, lawmakers, physicians, and other health professionals. New PR officer Jane Cordray was instructed to develop a proactive relationship with the media by establishing a database of reporters who cover medical issues; develop a periodic bulletin to inform the press and legislators about the Board's activities and issues of interest; produce a press kit for distribution to press outlets; and design a public information campaign.

At the same meeting, MBC discussed the merits of developing a relationship with the American Association of Retired Persons (AARP). Citing AARP's strong lobby in Congress and its recent interest in critiquing the efficacy of state medical boards (including the publication of guidelines enabling its members to evaluate such boards for themselves), Executive Director Ken Wagstaff recommended that the Board make an attempt to court the special interest group and hopefully enhance MBC's image in the process. Wagstaff and Assistant Executive Director Tom Heerhartz advised the Board that AARP could be a useful ally in the event that future federal legislation threatens to impact MBC's mandate, a possibility of which staff has warned the Board in the past. The Board resolved to instruct its new public relations officer to contact AARP's San Francisco office to arrange for future communications between the two organizations.

At its February meeting, DOL reviewed test results from the 1990-91 oral examinations. A subcommittee was formed, consisting of Dr. Galal S. Gough and public member Ray Mallel, to investigate the very low failure rate. Dr. Gough was especially disturbed by the 2.82% failure rate. He claimed that in his experience as a test examiner, the failure rate has remained at 10-15% over the past 20-25 years. Dr. Gough rejected other DOL members' suggestions that today's applicant pool is more highly skilled. Dr. Gough and Mr. Mallel, concerned that standardization of the exam three years ago has affected test results, will analyze the trend and report back to the Division at a future meeting.

FUTURE MEETINGS:

September 12-13 in San Francisco.
November 21-22 in San Diego.

ACUPUNCTURE COMMITTEE

Executive Officer: Lynn Morris
(916) 924-2642

The Acupuncture Committee (AC) was created in July 1982 by the legislature as an autonomous body; it had

previously been an advisory committee to the Division of Allied Health Professions (DAHP) of the Medical Board of California.

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

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

MAJOR PROJECTS:

Examination Preparation. At AC's January 10 meeting, Committee member Leona Yeh reviewed a report from Hoffman Research Associates (HRA), AC's exam contractor, in conducting an occupational analysis of the practice of acupuncture and preparing AC's new licensing exam. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 72 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 104 for background information.) As to the occupational analysis, Dr. Yeh explained that the preliminary survey was completed, mailed to those involved in the data collection/validation phase, and then revised. The revised survey was then mailed to 100 acupuncturists as a pilot. The final survey was scheduled for mailing during the last week in January.

With respect to the exam, HRA was in the process of correcting and refining the herb list and drafting approximately 100 questions. Although HRA was somewhat behind schedule, Dr. Yeh reported that within the next few months the occupational analysis would be completed, the new exam plan developed, additional questions drafted and translated, and the revised study guide completed—all in time for the written exam on May 3-4 in Oakland and the June 8-9 clinical exam in Los Angeles.

Implementation of SB 633. At its January meeting, AC considered recommendations made by its special task force on the implementation of SB 633 (Rosenthal) (Chapter 103, Statutes of 1990), which added section 4945.5 to the Business and Professions Code. That section requires all acupuncturists licensed prior to January 1, 1988, to complete 40 hours of continuing education (CE) in six specified subject areas by January 1, 1993. The task force held a hearing last November to receive recommendations from acupuncture schools and professional associations, CE providers, and members of the profession for implementing the new requirement. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 71-72 for background information.)

At its January meeting, AC adopted the recommendations of the task force, which (among other things) define the types of courses which could be included in the six subject matter areas. The Committee also agreed that at least four hours should be taken in each required subject matter area; that the remaining 16 hours could be concentrated in any of the specified areas; and that AC should use its existing method for approving CE providers, but that staff should develop a system for efficiently monitoring compliance. Additionally, AC decided that one "clock hour" of CE would constitute 50 minutes; that new regulatory amendments should clarify that "offering" a CE course means "before first advertised"; and that evidence of a higher course of study which required a high school prerequisite as part of its admission policy is acceptable evidence of a high school diploma. AC must now draft regulatory language implementing SB 633 for formal rulemaking proceedings.

Update on Acupuncture School Approval. As amended by AB 4671 (Elder) in 1988, Business and Professions Code section 4939 requires all acupuncture schools approved by AC to become approved by the Council for Private Postsecondary and Vocational Education (CPPVE) under Education Code section 94310 by September 1, 1990, or within five years of initial approval by the Committee, whichever is later. AC is required to file an accusation against any acupuncture school which fails to meet this deadline, seeking to remove AC's approval of that school. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 71 for background information.) At AC's January 10 meeting, Executive Officer Lynn Morris stated that AC had decided to file accusations against five schools which failed to comply with section 4939. Two of the schools have recently come into compliance; but accusations have been filed against the other three. Adjudicatory hearings are set for June.

LEGISLATION:

SB 417 (Royce). The Acupuncture Licensure Act provides for the licensure and regulation of acupuncturists; requires the Committee to issue a license to practice acupuncture to any person who makes an application and meets certain requirements, including completion of an education and training program approved by the Committee; and requires, in the case of an applicant who has completed education and training outside the United States and Canada, documented educational training and clinical experience which meets certain prescribed standards.

As introduced February 20, this bill would instead require a person to complete an education and training program licensed by the appropriate governmental authority, as determined by the Committee, to award a professional degree of traditional oriental medicine. In the case of an applicant who has completed education and training outside the United States and Canada, this bill would require this educational training and clinical experience to be certified by a testing agency approved by the Committee as equivalent to the standards established pursuant to prescribed provisions through an examination of the training and education which is based on educational program learning outcomes comparable to those of institutions approved under a certain provision, as determined by the Committee.

Existing law also requires that, except as otherwise provided, on or before September 1, 1990, or within five years of initial approval by the Committee, whichever is later, each acupuncturist training program approved by the Committee must receive approval by the CPPVE in the field of traditional oriental medicine, or the Committee's approval of the program will automatically lapse. This bill would instead require, except as otherwise provided, that within three years of initial approval of the Committee, each program so approved by the Committee must receive an unconditional grant of approval as a California degree-granting institution in the field of traditional oriental medicine, or the Committee's approval of the program will automatically lapse.

This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

At AC's January 10 meeting, the members elected Lam Kong as its new

Chair for 1991. The Committee also decided to establish two Vice Chair positions; Sophia Peng and Leona Yeh were elected as the Vice Chairs. AC also decided to present a plaque of appreciation to outgoing Chair David Chen at its March 21 meeting.

Also at the January meeting, Executive Officer Lynn Morris announced that AC's change from a biennial renewal system to an annual renewal system became effective on January 1. Licensees with expiration dates after January 31, 1991, will pay the annual renewal fee of $325, and their next expiration date will be in 1991. Therefore, AC will not see an increase in its revenue as a result of this change until 1992.

Also in January, AC decided that Angela Chang will head a task force to develop both a video and a consumer brochure on acupuncture.

FUTURE MEETINGS:

July 18 in San Diego.
October 17 in Los Angeles.
December 12 in Sacramento.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Elizabeth Ware
(916) 920-6377

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

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

MAJOR PROJECTS:

Trainee Supervision Regulations. On January 24, the Office of Administrative Law (OAL) approved HADEC's rulemaking file on new section 1399.115, which sets forth grounds upon which DAHP may deny a hearing aid dispenser the authority to supervise a dispenser trainee. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 87 for background information.)

Citation and Fine Regulations. In mid-1990, HADEC proposed new regulatory sections 1399.135-.139 to establish a system for issuing citations and fines. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 87-88 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 105 for background information.) Pursuant to Business and Professions Code section 125.9, these rules would authorize HADEC's Executive Officer to issue citations containing orders of abatement and fines for violations of specified provisions of law. DAHP adopted these regulations at its November 1990 meeting. At this writing, HADEC is still preparing the rulemaking file for submission to OAL.

Regulatory Determination Requested. On January 11 in the *California Regulatory Notice Register*, OAL published notice that Robert Hughes of Long Beach has requested a determination as to the "underground rulemaking" status of several of the policies and procedures of HADEC and the Speech Pathology and Audiology Examining Committee. Among other things, Hughes challenges several aspects of HADEC's examinations and its policies regarding temporary licenses and evaluating the competency of a hearing aid dispenser to supervise a trainee. Public comments were due on February 11; HADEC had until February 25 to respond; and OAL's determination was scheduled to be issued on March 27.

Consumer Pamphlet. At its March 2 meeting, HADEC approved the revised version of its consumer information brochure, *Everything You Always Wanted to Know About Hearing Aids*! (See CRLR Vol. 11, No. 1 (Winter 1991) p. 73 and Vol. 10, No. 4 (Fall 1990) p. 88 for background information.) Staff expects the pamphlet to be released by June 1. At this writing, details on distribution of the brochures are still being worked out, but it is believed that all dispensers will receive a number of copies free of charge, and larger quantities may be purchased.

Creation of Enforcement Panel. In conjunction with the Medical Board's Central Complaint Investigation and Control Unit (CCICU), HADEC is planning to establish a panel of expert consultants in the field of hearing aid dispensing to assist in the investigation of complaints against dispensers. The panel will be made up of approximately five members representing both the industry and the medical profession. The panel will be trained by the Attorney General's office in analysis techniques and will render information and expert opinion to the CCICU while a complaint is being investigated. It is believed that investigations, analysis, and documentation will become more accurate and efficient if the Medical Board investigator is able to consult with someone with knowledge in the field. Former HADEC member Knox Brooks has volunteered to chair the panel.

RECENT MEETINGS:

At HADEC's March 2 meeting, the Examination and Education Requirements Subcommittee reported the completion of its occupational analysis. This analysis, which was based on interviews with dispensers regarding their perceptions of the field and the skills they use in their occupation, is part of the Examination Validity Review Project. The Project is a two-year study of the current Hearing Aid Dispensers Examination and is designed to assess its effectiveness and to facilitate the possible creation of a new exam. The Project is to be completed by the end of 1992.

Staff reported that the implementation of the new cyclical license renewal program is going fairly smoothly. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 88 for background information.) The program, which is designed to even out HADEC's yearly cash flow and allow for greater administrative efficiency, went into effect on January 1. HADEC's office received only a few complaints from licensees who, this year, will have to pay both their annual fee beginning the month they were born as well as a prorated fee for the period running from January 1 to their newly-designated renewal month.

FUTURE MEETINGS:

September 14 in San Francisco.
December 7 in Los Angeles.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Steven Hartzell
(916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member

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

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapist assistants (PTAs), and physical therapists certified to practice kinesiological electromyography or electroneuromyography.

PTEC 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.

At its January 25 meeting in San Francisco, PTEC welcomed Judith McKinnon as a new public member. Ms. McKinnon founded and directs the McKinnon Institute, a professional massage and bodywork school in Oakland. Ms. McKinnon will fill the unexpired term of former public member Patricia Goodman, which ends on June 1, 1992. At this writing, no replacement has been appointed for public member Mary Ann Mayers, who resigned in November 1990. The Committee now has two public members and three PT members.

Carl Anderson, one of the Committee's licentiate members, was reappointed by Governor Deukmejian before he left office on January 7. Mr. Anderson was serving PTEC during a grace period following the expiration of his term on June 1, 1990.

MAJOR PROJECTS:

PT Fee Increases. At its January 25 meeting, PTEC held a public hearing on proposed regulatory changes to sections 1399.50(d), 1399.50(e), and 1399.50(f), Chapter 13.2, Title 16 of the CCR. Section 1399.50(d) would be amended to raise the initial PT licensure fee from $40 to $50. Amended section 1399.50(e) would raise the current biennial renewal fee for PTs from $40 to $50; and an amendment to section 1399.50(f) would raise the delinquency fee from $20 to $25. The Committee opened the floor for comment and received the endorsement of the California chapter of the American Physical Therapy Association through its president Patricia Sinnott Schenkkan. PTEC then unanimously approved the regulatory changes; at this writing, staff is preparing the rulemaking file for submission to the Office of Administrative Law (OAL).

PTA Fee Increases. At its April 5 meeting, PTEC was scheduled to hold a public hearing on proposed regulatory changes to subsections (c) and (d) of section 1399.52. These changes would increase the biennial renewal fee for a PTA from $40 to $50, and the delinquency fee from $20 to $25.

Improving Relations with DAHP. In an effort to resolve the problems which exist between the Medical Board's Division of Allied Health Professions (DAHP) and the boards and committees which regulate the allied health professions under DAHP's jurisdiction, DAHP has attempted to provide an atmosphere for better relations. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 74 and Vol. 10, No. 4 (Fall 1990) p. 89 for background information.) Bruce Hasenkamp, DAHP's liaison to PTEC, was unable to attend the January 25 meeting, but new DAHP Program Manager Anthony Arjil spoke on behalf of Mr. Hasenkamp and expressed optimism about the improvement of relations between DAHP and PTEC. Mr. Arjil also addressed the Medical Board's pending request to be relocated outside of the Department of Consumer Affairs (DCA). In response to opposition to this request expressed by several PTEC members, Mr. Arjil stated that the request will most likely not be granted because most of the Medical Board members do not agree with the proposal.

Diversion Program. Also in January, Executive Officer Steven Hartzell discussed PTEC's new diversion program. The program, mandated by SB 2512 (McCorquodale) (Chapter 1087, Statutes of 1990), is intended to identify and rehabilitate licentiates whose competency is impaired by drug or alcohol abuse. Funding for the establishment of this program will be available in July through a budget change proposal. PTEC will release a request for proposals (RFP) in early summer, to establish an outreach service to be maintained with the assistance of a private company. Initially, PTEC will offer a confidential referral service to licentiates who call the outreach service. The Committee hopes to extend the range of diversion services after the program becomes established.

LEGISLATION:

SB 483 (Green), as introduced February 26, would authorize PTEC to create a cost recovery system; that is, in any order issued in resolution of a disciplinary proceeding before the Committee, PTEC may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to PTEC a sum not to exceed the actual and reasonable costs of the investigation and prosecution. The bill would specify procedures to enforce an order for payment. This bill would also prohibit PTEC from renewing or reinstating the license or approval of any person who has failed to pay all of the costs ordered, except under prescribed conditions where a financial hardship has been demonstrated.

This bill would also increase the initial PT license fee and the renewal fee to $80, unless a lower fee is fixed by PTEC; increase the fee for the issuance and renewal of each PTA approval to $80, unless a lower fee is fixed by the Committee; and delete an existing $25 limitation on delinquency fees. This bill is pending in the Senate Business and Professions Committee.

AB 819 (Speier). Existing law provides that, except as otherwise specified, the offer, delivery, receipt, or acceptance by prescribed licensed health professionals of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person is unlawful, punishable as a misdemeanor or felony. Existing law also provides that it is not unlawful for a person to refer a person to a laboratory, pharmacy, clinic, or health care facility solely because the licensee has a proprietary interest or coownership in the facility.

As introduced February 27, this bill would, effective July 1, 1992, delete the exception for proprietary or coownership interests, and would instead provide that it is unlawful for these licensed health professionals to refer a person to any laboratory, pharmacy, clinic, or health care facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest; the bill would also provide that disclosure of the ownership or proprietary interest would not exempt the licensee from the prohibition. However, the bill would permit specified licensed health professionals to refer a person to a laboratory, pharmacy, clinic, or health care facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest if the person referred is the licensee's patient of record, there is no alternative provider or facility available, and to delay or forego the needed health care wold pose an immediate health risk to the patient. This bill is pending in the Assembly Health Committee.

LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n et al., v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento County Superior Court), petitioners and intervenors (including PTEC) challenge BCE's adoption and OAL's approval of section 302 of BCE's rules, which defines the scope of chiropractic practice. The parties have been engaged in extensive settlement negotiations following the court's August 1989 ruling preliminarily permitting chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation. A significant step towards final settlement occurred recently when the California Medical Association reached a settlement with BCE and other parties by agreeing to language of a proposed regulation on the scope of practice designed to replace the challenged section. This new scope of practice regulation was submitted by BCE to OAL as an emergency regulation, and is currently pending OAL approval. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 106; Vol. 9, No. 4 (Fall 1989) p. 127; and Vol. 9, No. 3 (Summer 1989) p. 118 for background information on this case.)

RECENT MEETINGS:

On PTEC's January 25 agenda was a continuation of its December 14 discussion of the practice of physical therapy through a general business corporation (as opposed to a professional corporation). (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 74-75 for background information.) In response to concerns about this practice expressed by several PTEC members, DCA legal counsel Greg Gorges noted that, in December 1987, the Committee adopted a resolution stating that nothing in the Physical Therapy Practice Act prohibits such practice, and that any changes to this resolution proposed by PTEC would have far-reaching consequences. For example, many hospitals are incorporated as general business corporations; if PTs were allowed to practice only through professional corporations, hospitals could not employ PTs (they would have to be independent contractors). Gorges stressed that any proposal entertained by PTEC in this area should be accompanied by public hearings. Following extensive discussion, PTEC adopted a motion to review its December 1987 resolution, with an open forum on the issue scheduled for PTEC's October meeting. The Committee also decided to publish a press release or newsletter article to apprise the PT community that it is reconsidering its position on this issue.

FUTURE MEETINGS:

August 14 in Sacramento.
October 17 in Los Angeles.

PHYSICIAN ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

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

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

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

MAJOR PROJECTS:

Scope of Practice Regulations Rejected. For over two years, PAEC has been engaged in drafting and adopting new regulations defining the permissible scope of practice of a physician assistant, in response to Attorney General's Opinion 88-303 (Nov. 3, 1988). Specifically, PAEC is attempting to amend sections 1399.541, 1399.543, and 1399.545, Chapter 13.8, Title 16 of the CCR. The proposed regulatory changes would permit a PA's supervising physician (SP) to specify the type and limit of delegated medical services based on the SP's specialty or usual and customary scope of practice. They would also authorize PAs to initiate (or transmit an order to initiate) certain tests and procedures, and to provide necessary treatment in emergency or life-threatening situations. The Medical Board's Division of Allied Health Professions (DAHP) originally approved the regulatory changes in December 1989. However, the Director of the Department of Consumer Affairs rejected the regulations in October 1990. By unanimous vote, DAHP overrode that rejection and submitted the rulemaking package to the Office of Administrative Law (OAL) on October 12, 1990. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 75; Vol. 10, No. 4 (Fall 1990) p. 90; and Vol. 10, No. 1 (Winter 1990) pp. 81-82 for background information.)

On November 13, OAL rejected the proposed regulatory changes, on grounds they failed to satisfy the clarity, nonduplication, and necessity standards of Government Code section 11349.1, and because the rulemaking record failed to include responses to all comments and was deficient in other technical respects.

On January 11, PAEC released a modified version of section 1399.541, in an attempt to meet some of OAL's objections. After accepting comments on the modified regulatory package until January 28, PAEC resubmitted the changes to OAL on March 11. At this writing, OAL is still reviewing the rulemaking record.

Fee Increases. At its January 4 meeting in Napa, PAEC approved proposed changes to regulatory section 1399.553, which increase the approval fee for SPs from $50 to $100, and increase the biennial approval fee for SPs from $100 to $150. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 75-76 for background information.) At this writing, Committee staff is preparing the rulemaking file on these fee increases for submission to OAL.

Reimbursement for PA Surgical Services. In a recent response to correspondence from Assemblymember Sam Farr regarding reimbursement by an insurance company for surgical services provided by a licensed PA acting under the direction and supervision of an approved supervising physician, Executive Officer Ray Dale stated that PAEC believes legislation appears necessary to clarify the circumstances under which insurance company reimbursement is appropriate.

A PA is authorized by the Medical Practice Act, the Physician Assistant Practice Act, and the Physician Assistant Regulations to perform surgery, and also

to act as first or second assistant (surgeon) during a surgery performed by a lead surgeon. A PA may perform surgical procedures under the supervision of an approved supervising physician, if qualified by education and training, and if delegated in writing to do so by the supervising physician.

The primary concern of the insurance company is that PAs are not specifically mentioned in the Insurance Code's definition of "physician equivalents" for purposes of benefits. However, PAEC's opinion is that a PA who either performs surgery or acts as a "first or second assistant in surgery" under the direction of a PAEC-approved supervising physician is legally doing so and is essentially acting as either a "surgeon" or as an "assistant surgeon," thus qualifying as a "physician equivalent."

LEGISLATION:

AB 535 (Clute), as introduced February 14, would permit a PA acting under the patient-specific authority of his/her physician supervisor to administer a controlled substance to treat an addict for an addiction. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 76 for background information.) This bill is pending in the Assembly Health Committee.

SB 1077 (Killea), as introduced March 8, would raise the limit of the initial license fee for PAs from $100 to $250 and the biennial renewal fee from $150 to $300; raise the limit of the approval fee for SPs from $100 to $250 and the biennial renewal fee from $150 to $300; establish a fee for letters of endorsement, good standing, or verification of licensure or approval; require that all Committee approvals for SPs expire at midnight on the last day of the birth month of the physician; and require MBC to establish a cyclical renewal program for approvals. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 76 for background information.) This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

At the Committee's January 4 meeting, staff member Jennifer Barnhart presented a status report on PAEC's Diversion Program. The purpose of the program is to identify and rehabilitate PAs whose competency may be impaired due to chemical abuse. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 90 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 107 for background information.) As of January 4, no one had yet enrolled in the program.

Executive Officer Ray Dale reported on the status of the enforcement program. Due to an increase in costs for MBC investigative services, PAEC's enforcement costs will exceed the budgetary allowance. Therefore, money from other line items will be diverted to compensate for this increase.

FUTURE MEETINGS:

July 26 in Newport Beach.
October 11 in Monterey.

BOARD OF PODIATRIC MEDICINE

Executive Officer: James Rathlesberger
(916) 920-6347

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

The Board licenses doctors of podiatric medicine (DPMs), administers two licensing examinations per year, approves colleges of podiatric medicine, and enforces professional standards by initiating investigations and disciplining its licentiates, as well as administering its own diversion program for DPMs. The Board consists of four licensed podiatrists and two public members; at this writing, one of the public member seats is vacant.

MAJOR PROJECTS:

Regulatory Determination Issued. On December 26, 1990, the Office of Administrative Law (OAL) released its decision on the status of BPM's February 17, 1984 policy decision regarding the use of the terms "podiatric physician," "podiatric surgeon," and "podiatric physician and surgeon" by DPMs. (*See supra* agency report on OAL; *see also* CRLR Vol. 11, No. 1 (Winter 1991) p. 77 and Vol. 10, No. 4 (Fall 1990) pp. 91-92 for background information.) OAL concluded that BPM's policy statement, which finds that DPMs may use these terms and states that BPM will not investigate or prosecute a DPM who uses them, is a regulation within the meaning of the Administrative Procedure Act (APA). The regulatory determination was requested by the California Medical Association.

OAL first found that because the challenged provision is intended to apply to all persons who practice podiatric medicine and who wish to use the terms in question, the policy establishes a rule or standard of general application.

OAL then reviewed whether the challenged rule interprets, implements, or makes specific any provision of law which BPM is charged with enforcing, and determined that "[t]here can be little doubt that the challenged 'policy decision' is [BPM's] interpretation of Business and Professions Code section 2054 which prohibits the use of terms or letters falsely indicating the right to practice as a physician or surgeon without holding the proper certificate under the [Medical Practice Act]." OAL noted that the policy decision itself referenced section 2054.

OAL then reviewed whether the policy statement falls within the "internal management" exception to the APA requirements. BPM argued that "the policy decision quite clearly relates only to the internal management of the Board of Podiatric Medicine since it specifically concerns those situations where the Board will not pursue an enforcement action." OAL rejected this reasoning, stating that the dispositive question is not whether the challenged policy requires Board action or inaction, but whether it interprets, implements, or makes specific the law the agency is charged with enforcing.

As a result of its findings, OAL concluded that BPM's policy decision is a regulation and is without legal effect unless adopted in compliance with the APA. However, in discussion of the decision at their March 1 meeting, BPM members were unclear as to the significance of the ruling. OAL is unable to force BPM to discipline members for using the terms, and has no authority to decide whether the use of the terms by DPMs is inconsistent with existing law (*e.g.*, the laws relating to unlicensed practice or misleading advertising) until they are formally adopted as a regulation.

Enforcement Update. Executive Officer Jim Rathlesberger continues to push hard on enforcement issues. At the Board's March 1 meeting, he introduced Teena Arneson, who has been hired as BPM's new Enforcement Coordinator; she will begin implementing the Board's citation and fine program within the next six months. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 77 and Vol. 8, No. 4 (Fall 1988) p. 64 for background information.) Currently, she is working on improving the efficiency with which BPM staff handles the enforcement process. Ms. Arneson will also be creating a new continuing education (CE) audit program; when licentiates apply for relicensure, their CE credits will be audited

to ensure compliance with the requirement.

As of March 1, BPM had received 144 complaints about podiatrists during the 1990-91 fiscal year. Nine cases had been fully investigated and sent to the Attorney General's office for enforcement proceedings. Although the AG's office is experiencing a significant backlog (as the Medical Board—under pressure by legislation which withheld one-quarter of its annual operating budget—eliminates its backlog of pending cases, and this bubble of cases starts to work through the system), three accusations have been issued this year, and three disciplinary hearings have been held. One suspension and two revocations, with one additional voluntary temporary suspension, have been issued.

CPR Requirement. At the Board's past few meetings, members have discussed the California Podiatric Medical Association's (CPMA) request to repeal regulatory section 1399.675, which requires DPMs to demonstrate, at the time of each license renewal, that they have a current, valid certificate in basic cardiopulmonary resuscitation (CPR). CPMA feels that mandatory CPR recertification is unnecessary, as CPR is rarely used by DPMs. CPMA, the state's major podiatric trade association, believes that if a patient goes into cardiac arrest during an in-office operation, 911 service is sufficient, and that the DPM should not be required to know or administer CPR. This issue has been raised at least three times over the past five years, and the Board again rejected CPMA's request, stating that if even one life is saved, then the requirement is worth the extra effort. BPM public member Karen McElliott stated that she would be appalled to learn that her medical care provider does not know CPR. The Board unanimously decided not to consider the issue further.

LEGISLATION:

SB 1119 (Presley). Existing law provides that BPM may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of a podiatrist. Existing law requires the district attorney, city attorney, or other prosecuting agency to notify BPM of any filings against a licensee charging a felony, and the clerk of the court in which the licensee is convicted of a crime is required to transmit a copy of the record of conviction to the board. As introduced March 8, this bill would require this notification and transmittal duties to be limited to those felony charges and criminal convictions that would be grounds for suspension of the licensee pursuant to the above-described provision. This bill is pending in the Senate Business and Professions Committee.

AB 1568 (Klehs), as introduced March 7, proposes to make numerous changes to the Health and Safety Code, the Insurance Code, and the Welfare and Institutions Code, relating to podiatry. For example, existing law authorizes the Office of Statewide Health Planning and Development to make grants to assist organizations in meeting the cost of special projects to plan, develop, or establish innovative programs of education in the health professions. This bill would include podiatrists as one of these listed health professions. This bill would also include podiatrists within the list of health professionals which comprise the Department of Health Services' California Health Services Corps.

Existing law prohibits a hospital which contracts with an insurer, nonprofit hospital service plan, or health care service plan from determining or conditioning medical staff membership or clinical privileges upon the basis of a physician's participation or nonparticipation in the contract. This bill would extend this prohibition to conditioning memberships or privileges upon the basis of a podiatrist's participation or nonparticipation in the contract.

The Knox-Keene Health Care Service Plan Act of 1975 requires, except as specified, each health care service plan contract to provide to subscribers and enrollees all of the basic health care services, and defines the term "basic health care service" as including physician services. This bill would define the term physician and surgeon, for purposes of the above, as including a podiatrist certified to practice podiatric medicine and providing services within the scope of practice of podiatric medicine.

Existing law requires that rates of reimbursement under the Medi-Cal Act make no distinction based on whether a particular service is provided by a physician or a dentist; this bill would require that the rates make no distinction based on whether a particular service is provided by a physician, podiatrist, or dentist. This bill is pending in the Assembly Health Committee.

AB 465 (Floyd). Existing law provides general civil immunity to persons, including peer review committees, professional societies, and health facilities, that provide information to BPM or the Department of Justice indicating that a licensee may be guilty of unprofessional conduct or impaired because of drug or alcohol abuse or mental illness. Existing law also sets forth special immunity provisions relating to the activities of certain health care professional peer review committees, professional societies, health facility professional staff committees, and specified professional members of underwriting committees of an interindemnity or reciprocal or interinsurance exchange or mutual company; these special provisions afford immunity to a member only if he/she acts without malice, has made a reasonable effort to obtain the facts, and acts in a reasonable belief that the action taken by him/her is warranted by the facts. As introduced February 8, this bill would make the above-described general immunity provisions of existing law inapplicable to activities subject to the existing law prescribing the above-described special immunity. This bill is pending in the Assembly Judiciary Committee.

Anticipated Legislation. At this writing, BPM is looking for a legislative author to carry a bill to reduce its initial license fee from $800 to $400. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 77 for background information.)

RECENT MEETINGS;

At BPM's March meeting, Barry Ladendorf was introduced. Mr. Ladendorf is the Supervising Deputy Attorney General for the Health Quality Enforcement Section (HQES) of the Attorney General's office. He spoke about the reorganization of the AG's office in light of SB 2375 (Presley) (Chapter 1597, Statutes of 1990), which is intended to strengthen the enforcement systems of MBC and BPM. (*See supra* agency report on MBC; *see also* CRLR Vol. 11, No. 1 (Winter 1991) pp. 66-67 and Vol. 10, No. 4 (Fall 1990) pp. 79-80 for information about SB 2375.)

Also in March, BPM discussed its budget and its desire to find an author to introduce legislation to allow it to reduce its initial licensing fee from $800 to $400. The language of the proposed bill would give the Board the authority to set the initial fee requirement at any level between $400 and $800, and to vary it between those levels. This would give the Board some discretion over the amount of funding it receives during any fiscal year, and would allow it to create funding cushions in case of increased enforcement of other unforeseen expenses.

The Medical Board's Division of Allied Health Professions sent its representative to the March BPM meeting. Bruce Hasenkamp, President of DAHP, made a short presentation stating that the Division wishes to have a better working relationship with its various boards and

committees, and is willing to earn it by assisting the allied health programs in sponsoring desired legislation. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 76 and Vol. 10, No. 4 (Fall 1990) pp. 81-82 and 91 for background information on this issue.)

FUTURE MEETINGS:
October 4 in Los Angeles.
December 6 in San Diego.

BOARD OF PSYCHOLOGY

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

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

MAJOR PROJECTS:

Permit Reform Act Regulations. The Permit Reform Act of 1981, Government Code section 15374 *et seq.*, requires agencies that issue permits, licenses, certificates, registrations, or any other form of authorization to engage in particular activity, to establish and follow timeline regulations for processing such applications. BOP recently completed an analysis of its application processing period, and held a formal public hearing on March 16 at which it adopted proposed regulations pursuant to the Act. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 93 for background information.) BOP's staff is currently compiling the rulemaking file for submittal to the Office of Administrative Law (OAL). The regulations, which would add section 1381.6 to Chapter 13.1, Title 16 of the CCR, set forth the following information for the processing of applications for psychological assistants, psychologists, and registered psychologists: (1) the maximum time for notifying an applicant that an application is complete or deficient; (2) the maximum time after receipt of a complete application to issue or deny a license; and (3) the minimum, median, and maximum actual processing times for issuance of a license based on the prior two years.

Increase in License Renewal Fee. On March 16, BOP also held a formal public hearing regarding its proposed amendment to section 1392(c) of its regulations to raise the biennial license renewal fee for psychologists. Presently, section 2987 of the Business and Professions Code, as amended by SB 2720 (Chapter 622, Statutes of 1990), establishes the biennial renewal fee for psychologists at $225, while existing regulatory section 1392(c) sets the fee at only $150. This proposal, which was adopted by the Board, would conform the existing regulation to the statute, and raise renewal fees to $225 for licenses expiring on or after January 1, 1991. At this writing, staff is preparing the rulemaking file on this change for submission to OAL.

Draft Language Assessing Dual Relationships. At its February meeting, BOP continued to discuss draft language of proposed regulations to define and prohibit certain relationships between a therapist and a patient outside the primary relationship of providing professional psychological services. The Board also discussed public comment received at the joint informal public hearing held last December by BOP and the Board of Behavioral Science Examiners regarding this language. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 78 for background information.) However, at the March 16 meeting, BOP Executive Director Tom O'Connor expressed dissatisfaction with the "dual relationship" terminology, and recommended to the Board that such terminology be abandoned, and that the proposal be reworked around the less ambiguous concept of "conflict of interest." The Board approved this recommendation.

Regulatory Amendments of Supervised Professional Experience. BOP has temporarily shelved draft language of these proposed regulations, pending OAL's approval of its Permit Reform Act regulations. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 78 and Vol. 10, No. 4 (Fall 1990) p. 93 for background information.) Staff expects to resume discussion of the regulations at either the May or July meeting.

LEGISLATION:

SB 774 (Boatwright), as introduced March 7, would, commencing January 1, 1995, prohibit BOP from issuing any renewal license unless the applicant submits proof satisfactory to the Board that he/she has completed no less than 50 hours of approved continuing education (CE) in the preceding two years; require each person renewing his/her license to practice psychology to submit proof satisfactory to the Board that, during the preceding two-year period, he/she has completed CE courses in or relevant to the field of psychology; authorize the Board to establish exceptions from the CE requirement for reasons of health, military service, or other good cause; and prohibit a psychologist from practicing outside his/her particular field(s) of competence as established by his/her education, training, CE, and experience. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 78 for background information.) This bill is pending in the Senate Business and Professions Committee.

SB 738 (Killea), as introduced March 6, would require BOP to establish required training or coursework in the area of domestic violence assessment, intervention, and reporting for all persons applying for an initial psychologist's license and the renewal of such a license; require all applicants to provide BOP with documentation of completion of the domestic violence training or coursework; and require BOP to exempt any psychologist who shows to the satisfaction of the Board that there would be no need for the training in his/her practice because of the nature of that practice. This bill is pending in the Senate Business and Professions Committee.

AB 1496 (Murray), as introduced March 7, would except from the psychotherapist-patient privilege confidential communications between a deceased subject of an inquest or inquiry and his/her psychotherapist when sought by a coroner for the purpose of inquiry into, and determination of, the circumstances, manner, and cause of violent, sudden, unusual, or other specified causes and circumstances of death or when sought by a coroner for the sole purpose of being introduced as evidence at a coroner's inquest proceeding. It would also prohibit the coroner from distributing or making available to any other person or entity these confidential communications, except as used in evidence at an inquest. This bill is pending in the Assembly Public Safety Committee.

LITIGATION:

In *McGuigan v. California Board of Psychology*, No. 3 Civil C010084 (Third District Court of Appeal), the Center for Public Interest Law (CPIL) filed its opening brief on behalf of appellant Dr. Frank McGuigan on April 4, requesting reversal of the trial court's order dismissing Dr. McGuigan's petition for writ of mandate. The petition was dismissed as moot on August 31, 1990, subsequent to BOP's belated agreement to grant Dr. McGuigan a statement of issues and an

administrative hearing regarding its denial of his 1984 application for issuance without examination of a license to practice psychology. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 94 for background information on this case.)

In appellant's opening brief, CPIL argues that despite BOP's eleventh-hour agreement to grant Dr. McGuigan a statement of issues and a hearing, the issue is not moot, as the case presents matters of great public interest regarding maintenance of fundamentally fair governmental procedures in licensing. Furthermore, CPIL argues that in light of an estimate that over 100 psychologists licensed in other states enter California each year (based on the American Psychological Association's estimated number of psychologists in the United States and the rate of the general population entering California, according to Bureau of Census data), the case involves questions reasonably likely to arise in the future.

Due to its request for an extension of time, Respondent BOP's brief is not expected to be filed until sometime in June.

RECENT MEETINGS:

At its February meeting, BOP elected Board officers for 1991. The Board reelected Dr. Louis Jenkins as Chair, Dr. Victor Howard as Vice Chair, and Dr. Philip Schlessinger as Secretary.

FUTURE MEETINGS:

September 27-28 in San Diego.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards
(916) 920-6388

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

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

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

MAJOR PROJECTS:

Fee Increase Adopted. Currently, section 1399.186(b), Division 13.4, Title 16 of the CCR, imposes a $60 biennial license renewal fee for speech pathology and audiology licenses which expire on or after December 31, 1987. At its February 22 meeting, SPAEC held a public hearing on its proposal to increase the renewal fee to $75. No oral or written comments on the proposal were presented; consequently, SPAEC adopted the proposed fee increase. At this writing, Committee staff is preparing the rulemaking file for submission to the Office of Administrative Law.

Reactivation of Abandoned Files. Under section 1399.154(d) of SPAEC's regulations, an application for licensure is deemed abandoned if it is not complete within two years from the date on which the application is filed, unless the applicant has requested an extension from the Committee. SPAEC's policy has been to give applicants 45 days' notice of the potential abandonment/destruction of the file. Proof of prior approval of supervised experience completed in non-exempt settings within California (a requirement for licensure) is destroyed with the file if the applicant does not request an extension of time to complete the application file within the 45 days. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 79 for background information.)

At its February 22 meeting, SPAEC decided to change its policy and keep a copy of the prior approval of supervised experience, and/or return the application materials to the applicant rather than destroy them.

As for application files which have been destroyed in the past, SPAEC decided that the applicant must prove to SPAEC that the supervised experience was completed with prior approval. An affidavit from both the applicant and the supervisor as to the completion of the experience is likely to be sufficient proof.

Conditional Licensure. Business and Professions Code section 2532.2(d) permits an individual who is either licensed in another state or who holds equivalent qualifications to receive a conditional license to practice for no more than 150 days from the date of filing an application for California licensure. The original intent of this provision was to permit individuals new to the state an opportunity to practice their profession while going through SPAEC's application and examination process.

At its February 22 meeting, SPAEC decided that this conditional licensure provision will also be interpreted to apply to applicants who have completed professional experience in an exempt setting within California. SPAEC found that its original interpretation unnecessarily discriminated between applicants new to the state and applicants who are not new to the state.

Ear Wax Removal. At its February 22 meeting, SPAEC reaffirmed its consensus that an audiologist is not permitted to perform ear wax removal. This procedure is considered the practice of medicine because it involves entering a bodily orifice.

Exam Waiver Interview. Previously, section 1399.159 of SPAEC's regulations required California licensure applicants to have taken the national examination in their respective field within the five years preceding the date on which the application for licensure is filed. However, SPAEC recently amended section 1399.159, which now allows the Committee to waive the five-year requirement under certain conditions, one of which is that the applicant must demonstrate to SPAEC that he/she maintained his/her knowledge of speech pathology or audiology. The Committee may require such an applicant to personally appear before it for an interview.

At its February 22 meeting, SPAEC reaffirmed its decision to require the following documentation to be in the Committee's possession at the time of the applicant's examination waiver interview: verification that the license application is complete; transcripts; exam scores; an updated resume; any extensive writing for publication which is applicable to the applicant's field; notarized copies of continuing education; and documentation of work experience.

RECENT MEETINGS:

At its February 22 meeting, SPAEC elected its 1991 officers. Robert Hall was unanimously elected Chair, and Betty McMicken was elected Vice Chair.

FUTURE MEETINGS:

June 28 in San Francisco.
September 6 in Los Angeles.
November 8 in Sacramento.